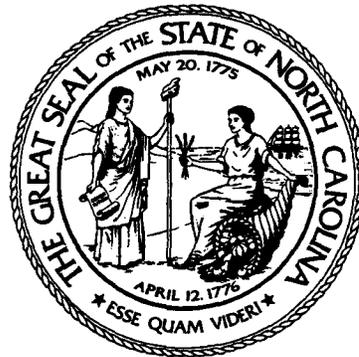


LEGISLATIVE RESEARCH COMMISSION

INSURANCE AND INSURANCE-RELATED ISSUES



**REPORT TO THE
1995 GENERAL ASSEMBLY
OF NORTH CAROLINA
1996 REGULAR SESSION**

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STATE OF NORTH CAROLINA
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH, NC 27601



May 1, 1996

TO THE MEMBERS OF THE 1995 GENERAL ASSEMBLY (REGULAR SESSION 1996):

The Legislative Research Commission herewith submits to you for your consideration its interim report on insurance. The report was prepared by the Legislative Research Commission's Committee on Insurance and Insurance-Related Issues pursuant to G.S. 120-30.17(1).

Respectfully submitted,

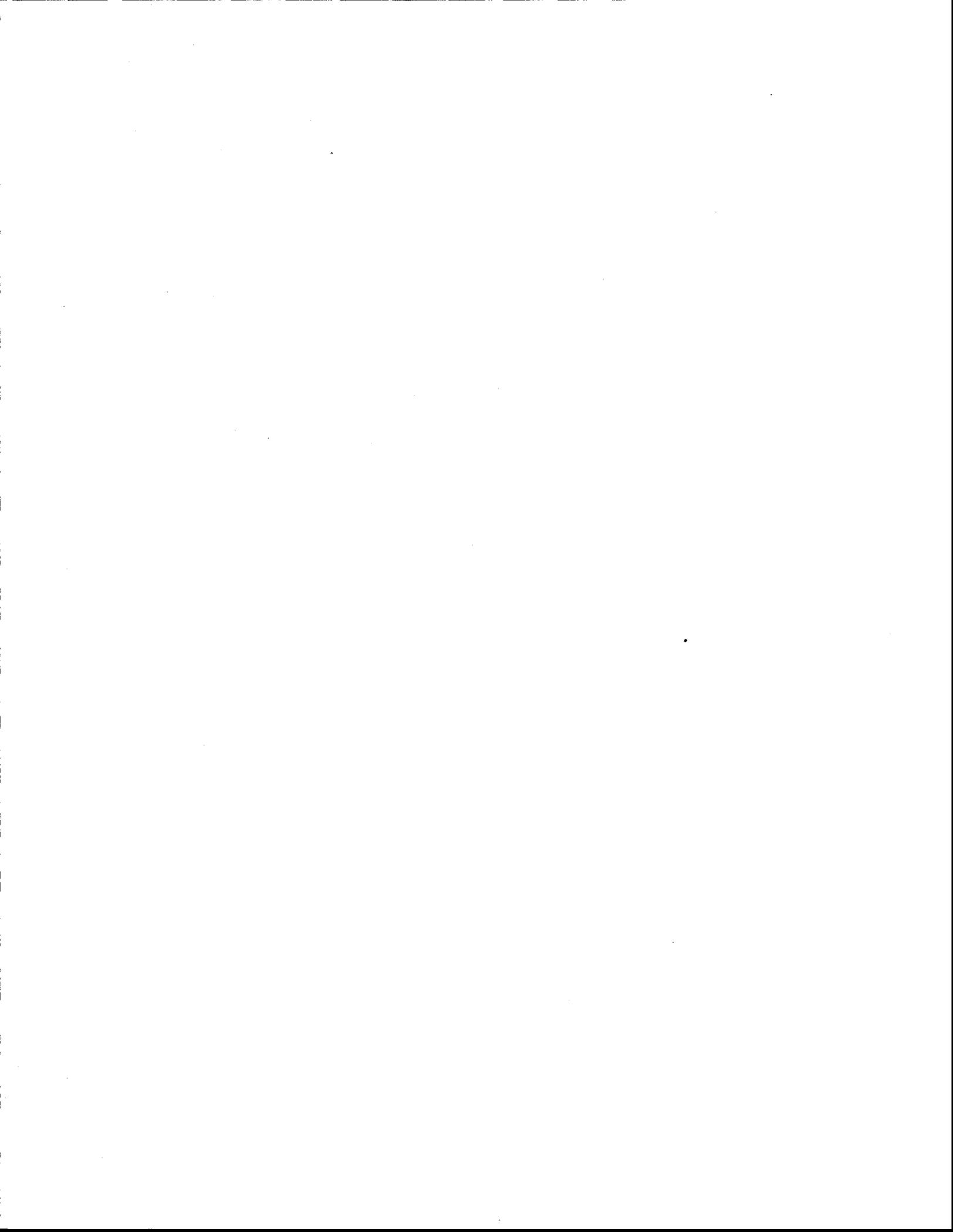
A handwritten signature in cursive script, appearing to read "Harold J. Brubaker", written over a horizontal line.

Harold J. Brubaker
Speaker of the House

A handwritten signature in cursive script, appearing to read "Marc Basnight", written over a horizontal line.

Marc Basnight
President Pro Tempore

Cochair
Legislative Research Commission



1995-1996

LEGISLATIVE RESEARCH COMMISSION

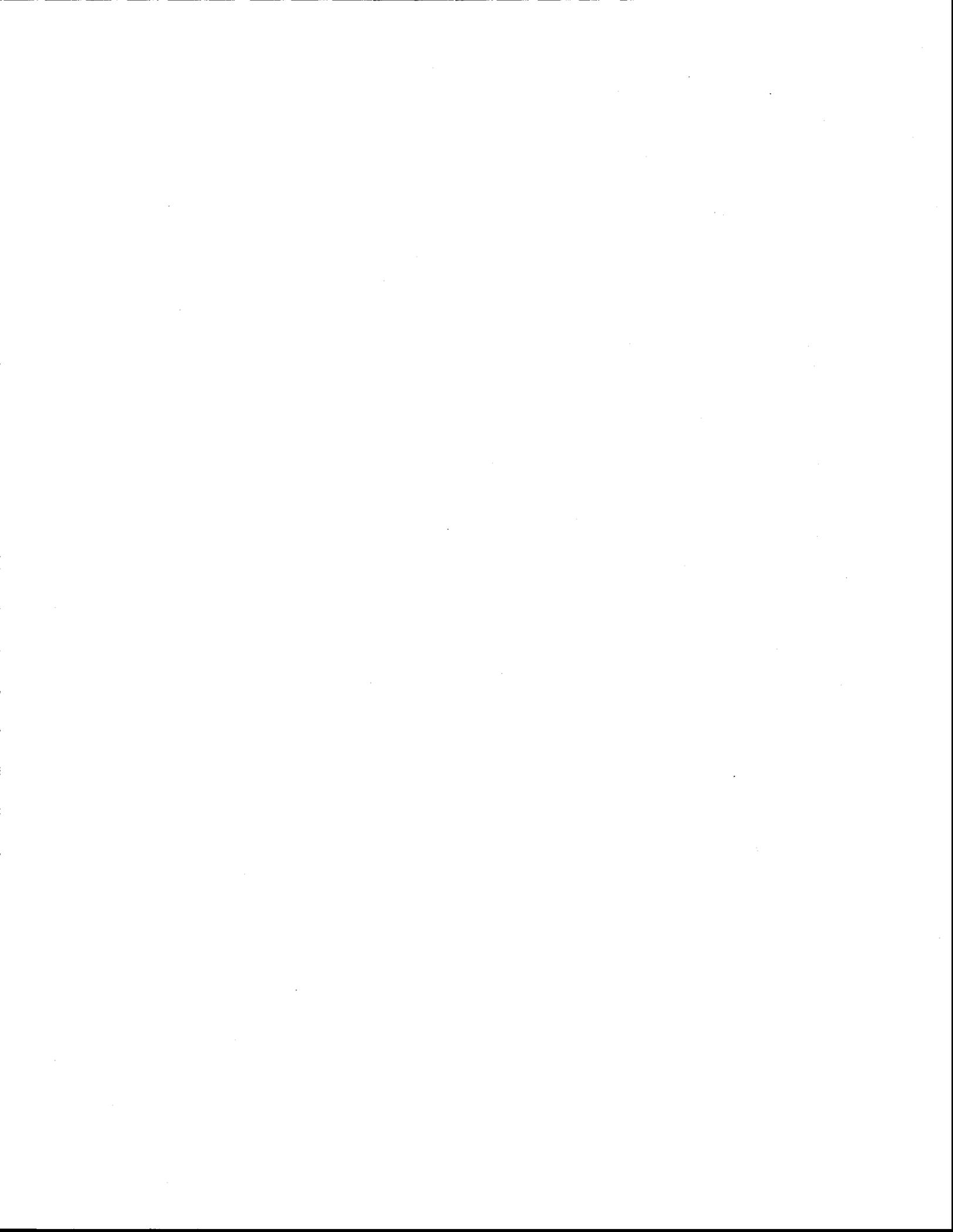
MEMBERSHIP

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the Senate
Marc Basnight, Cochair

Senator Frank W.
Ballance, Jr.
Senator R. L. Martin
Senator Henry McKoy
Senator J. K. Sherron, Jr.
Senator Ed N. Warren

Speaker of the House
of Representatives
Harold J. Brubaker, Cochair

Rep. Jerry C. Dockham
Rep. Larry Linney
Rep. Edd Nye
Rep. Gregory J. Thompson
Rep. Constance K. Wilson



PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is cochaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission, prompted by actions during the 1995 Session, has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The Cochairs of the Legislative Research Commission, under the authority of G.S. 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Cochairs, one from each house of the General Assembly, were designated for each committee.

The study of insurance and insurance-related issues was authorized by Section 2.1(13) of Chapter 542 of the 1995 Session Laws. Part II of Chapter 542 allows for studies authorized by that Part for the Legislative Research Commission to consider Senate Joint Resolution 881, Senate Bill 102 and House Bill 98, and Executive Order 66 (since amended by Executive Order 88) in determining the nature, scope and aspects of the study. Section 1 of Senate Joint Resolution 881 reads in part: "The Legislative Research Commission may study the problems of insurance availability and affordability in coastal and Eastern North Carolina.

The Commission may also study the operation of the Beach and FAIR plans and other matters relating to insurance availability and affordability." Senate Bill 102 and House Bill 98 authorize the Legislative Research Commission to study "the availability, coverage, and provision of long-term care insurance in North Carolina..." The relevant portions of Chapter 542, Senate Joint Resolution 881, and House Bill 98 (identical to Senate Bill 102) are included in Appendix A. The Legislative Research Commission authorized this study under authority of G.S. 120-30.17(1) and grouped this study in its Insurance Laws and Financial Institutions Grouping area under the direction of Representative Jerry C. Dockham. The Committee was chaired by Senator R.C. Soles, Jr. and Representative John A. Cocklereece. The full membership of the Committee is listed in Appendix B of this report. A Committee notebook containing the Committee minutes and all information presented to the Committee is filed in the Legislative Library.

COMMITTEE PROCEEDINGS

Senate Joint Resolution 881 authorized the Insurance and Insurance-Related Issues Committee of the Legislative Research Commission to study the issue of coastal insurance availability and affordability and the operation of the Beach Plan. The Committee met five times to consider insurance and insurance-related issues. During these meetings, the Committee studied the issue of coastal insurance availability and affordability, including ways to encourage the voluntary market to write policies in the beach area of the State and how to improve the North Carolina Insurance Underwriting Association (Beach Plan). The Committee requested the Department of Insurance and all interested parties to present their concerns and recommendations to the Committee. In addition to the Department, the Committee heard from the Outer Banks Chamber of Commerce, the Independent Professional Insurance Agents, the American Insurance Association, the Independent Insurance Agents of North Carolina, Nationwide Insurance Enterprises, State Farm Insurance Company, Aetna Life & Casualty, Allstate Insurance Company, and North Carolina Farm Bureau Mutual Insurance Company.

The Committee also considered issues related to the establishment of an emergency management trust fund, the assumption of reinsurance, the supervision and liquidation of continuing care facilities; the regulation of insurance company investments, insurance coverage of motor vehicles, and Department recommendations regarding making conforming and clarifying changes to the laws in the areas of Medicare supplement insurance and small employer health benefits.

January 30, 1996

The LRC Committee on Insurance and Insurance-Related Issues held its initial meeting on January 30, 1996, at 9:00 a.m. in Room 415 of the Legislative Office Building. Representative Jerry C. Dockham, LRC member, introduced the Committee members and staff. Representative John A. Cocklereece, Cochair of the Committee, presided over the meeting. Committee counsel reviewed the Committee's charge and the Committee adopted its budget.

The Independent Insurance Agents of North Carolina presented a film regarding the building code of North Carolina to the Committee. Mr. Dewey Meshaw, Manager of the Beach Plan, gave an overview of the Beach Plan to the Committee. He presented the Committee with an historical perspective of the Plan and discussed the structure of the Plan. Mr. Meshaw informed the Committee that the Beach Plan and the North Carolina Joint Underwriting Association (FAIR Plan), have grown each year since they were created and gave the Committee statistics supporting that fact. He also reviewed the profit and loss figures for the Beach and FAIR Plans. (See Appendix D) Finally, Mr. Meshaw discussed the revisions that were made to the Beach and FAIR Plans as a result of the 1991 Beach and FAIR Plans Study Committee of the Legislative Research Commission.

Mr. Dascheil Propes, with the Department of Insurance, spoke next. Mr. Propes distributed and reviewed a chart of suggested changes to the Beach Plan that was compiled from various sources since the 1991 study. There was general discussion regarding the fact that so few companies write coverage in the area covered by the Beach Plan.

Mr. John Bone with the Outer Banks Chamber of Commerce introduced Mr. Robert Wells and Mr. Fletcher Wiley to make recommendations to the Committee. Mr. Wiley discussed

the problems facing homeowners and businesses on the beach in obtaining insurance coverage. He emphasized that the lack of a competitive insurance market hurts the economy of the State's beaches and recommended that the Beach Plan provide coverage for loss of business income. Mr. Wells reviewed a list of recommendations presented to the Committee. (See Appendix E) He stated that the Beach Plan may want to consider providing law and ordinance coverage as well as loss of business income coverage.

There was discussion regarding the status of the federal Natural Disaster Protection Act. The Committee expressed interest in hearing the concerns and recommendations of the industry.

February 15, 1996

The second meeting of the Committee was held on February 15, 1996, at 10:00 a.m. in Room 643 of the Legislative Office Building. Senator R.C. Soles, Jr., Cochair of the Committee, presided.

Mr. Robert Caldwell with the North Carolina Grange addressed the Committee and presented a film on reinsurance. He stated that insurance companies need reinsurance to spread the risk.

Mr. Chris Roe, counsel for the American Insurance Association (AIA), spoke to the Committee next. (See Appendix F) Mr. Roe told the Committee that the AIA, when assessing state plans, considers whether plans: 1) maximize capacity; 2) manage windstorm exposure; and 3) adopt rates adequate enough to match the risk. He reviewed the state insurance plans of Florida and Texas in light of these principles and emphasized that North Carolina could adopt reforms to achieve these principles or goals.

Mr. Roe presented the recommendations of the AIA to the Committee. The AIA recommended: 1) maximizing capacity for higher windstorm deductibles; 2) providing some type of relief to the industry for residual market assessments; 3) allowing insurers to write themselves out of the Beach Plan; 4) purchasing reinsurance; and 5) getting surplus lines to take commercial risks out of the residual markets. The AIA does not recommend expanding the geographic region of the Beach Plan, requiring the Plan to write additional coverage like homeowners, providing indirect loss coverage, or assigning risks to insurers.

Mr. Smitty Harrison with the South Carolina Wind and Hail Underwriting Association spoke to the Committee about the problems facing South Carolina in providing coastal insurance, including the problems that developed as a result of Hurricane Hugo. He informed the Committee about the structure and funding of the South Carolina Beach Plan. He stated that North Carolina and South Carolina should not have a statewide hurricane plan like Florida and Hawaii because South Carolina and North Carolina are not experiencing the same insurance and political problems as those states.

Mr. Donald Stauffacher, Assistant Manager of the Beach Plan, and Mr. Alvin Ashworth, Accounting Manager of the Beach Plan, addressed the Committee on questions and issues posed by Committee counsel regarding the geographic region of the State covered by the Beach Plan, the requirements for member companies, and coverages available under the Beach Plan. In addition, Messrs. Stauffacher and Ashworth discussed the Plan's participation formula and the percentage participation and assessments for the member companies as well as the income of the Plan for fiscal years 1970-1995. (The written information submitted to the Committee by Messrs. Stauffacher and Ashworth is included in the Committee notebook in the Legislative Library.)

Ms. Karen Clark with Applied Insurance Research explained the use of computer modeling in determining risks and setting rates for the insurance industry. She informed the

Committee that the opinion of climatologists is that we are entering a more active period for hurricanes in the next 10 years.

The Committee also heard recommendations of the industry, including Ms. Susan Valauri, Nationwide Insurance Enterprises; Mr. Dave Lockard, State Farm Operations Superintendent; Ms. Joanne Kron, Allstate; Mr. Benjamin Seagle, Aetna Life and Casualty; and Mr. Bill Pollard, Executive Vice-President and General Manager of North Carolina Farm Bureau Mutual Insurance Company.

Ms. Valauri suggested that the Committee consider a three-part funding mechanism for the Beach Plan whereby Plan profits would be retained in a pre-funded loss reserve. The Plan would secure advance funding for catastrophic losses, such as revenue bonds or a line of credit. A recoupment process through an increase in policy premiums would be used each year until the loss is recouped. She also recommended that credits for homeowners policies be increased to make it advantageous to write voluntary business and that the Beach Plan territory be expanded. (See Appendix G)

Mr. Lockard stated that State Farm advocates a competitive voluntary market rather than an expansion in the geographic region of or coverage by the Beach Plan. State Farm supports adequate rates and a revised participation formula to provide greater incentives for companies to write voluntary business.

Allstate representative Ms. Joanne Kron informed the Committee that Allstate recommends reforms that would make the Beach Plan self-sustaining, increase rates to make them commensurate with the risk, expand the geographic area of the Plan, simplify the consent to rate procedures, and establish more loss mitigation efforts, such as strict enforcement of the building code.

Mr. Benjamin Seagle with Aetna Life and Casualty spoke to the Committee and informed the Committee of the growth in the Beach and FAIR Plans. He recommended surcharging

policyholders and abolishing the North Carolina Rate Bureau or, in the alternative, deleting the property coverages from the Bureau and having insurance companies file their rates and forms directly with the Commissioner. He also commended a Statewide FAIR Plan.

Finally, Mr. Bill Pollard, Executive Vice-President and General Manager of North Carolina Farm Bureau Mutual Insurance Company (Farm Bureau), addressed the Committee. He informed the Committee that Farm Bureau advocates a revision to the participation formula of the Beach Plan. At present, the percentage share exposure for each company is determined by the market share of voluntary writings written by the company throughout the State. This increases pressure on companies' policyholder surplus and the need to purchase catastrophe reinsurance. Mr. Pollard suggested that the problem may be solved in part by increasing deductibles by basing the deductibles on the percentage of the insured value of the property. Farm Bureau also advocates revising the Beach Plan so only wind and hail coverages are written through the Plan.

March 5, 1996

The third meeting of the Committee was held on March 5, 1996, at 10:00 a.m. in Room 544 of the Legislative Office Building. Senator Soles presided over the meeting.

The first speaker, Mr. Aaron "Buddy" Jackson with the Division of Emergency Management of the Department of Crime Control and Public Safety presented a proposal to the Committee for an Emergency Management, Preparedness, and Assistance Trust Fund. Mr. Jackson stated that a trust fund is needed because operational expenses of the emergency management program have increased as federal funding has decreased. The fund would be based on insurance surcharges of \$3.00 per homeowners policy and \$6.00 per commercial policy. Mr. Tom Collins, the Watauga County Emergency Management Coordinator and

President of the North Carolina Emergency Management Association, Mr. Dwayne West, the Johnston County Emergency Management Coordinator, and Mr. Sandy Sanderson, the Dare County Emergency Management Coordinator, were present in support of the trust fund proposal. The Committee questioned Mr. Jackson about the budget of the Division of Emergency Management, the location and staffing of the area offices of the Division, and the intended use of the proposed fund.

Mr. George Teague, on behalf of the Alliance of American Insurers, distributed the 1993 report of the Alliance. The report provides data on property insurance residual markets in over thirty states, including FAIR and Windstorm plans. The report includes data on the market shares of the residual market, the number of policies issued, and the profits and losses of the plans.

Mr. Donald Evans presented the concerns and recommendations of the Independent Insurance Agents of North Carolina (IIANC) to the Committee. He emphasized that the primary goal is to encourage companies to write policies in the beach area of the State voluntarily and recommended a revision to the participation formula and the retention of profits from the Beach Plan in a catastrophic claim pool. Mr. Evans also informed the Committee that IIANC supports the expansion of the insurance coverage offered by the Beach Plan to include business income coverage, homeowners coverage, and law and ordinance coverage.

The Committee discussed the extent to which the Beach Plan should be expanded while simultaneously encouraging companies to write voluntary policies. The Committee debated whether to expand the Beach Plan coverage to include homeowners coverage.

Mr. Dascheil Propes with the Department of Insurance addressed the Committee next. He disputed statements made by the Beach Plan and the industry regarding the variation of discounts by territory and the assertion that the Beach Plan is over-regulated. He also

informed the Committee that the Department does not recommend the trust fund proposal of the Division of Emergency Management.

Mr. Propes advocated a revision to the participation formula of the Beach Plan and the retention of Beach Plan profits in a pre-funded loss reserve. He urged the Committee to consider expansion of the coverage offered in the Beach Plan only after the participation formula has been revised and a reserve fund has been established.

The Committee questioned Mr. Propes regarding the inclusion of additional living expenses and the option of companies that do not have agents in the beach area buying business from the Plan. The Committee asked that the Department determine why independent companies are not writing policies in the beach area of the State.

The Committee discussed the recommendations submitted to the Committee from the Department of Insurance, the insurance industry, the American Insurance Association, the Independent Insurance Agents of North Carolina, the Outer Banks Chamber of Commerce, and the Independent Professional Insurance Agents Association. Committee counsel was directed to work with the Department, the industry, and the Beach Plan to draft recommendations and proposed legislation for presentation to the Committee at the next meeting.

March 21, 1996

The fourth meeting of the Committee was held on March 21, 1996, at 10:00 a.m. in Room 421 of the Legislative Office Building. Representative Cocklereece presided.

Mr. Robert Paschal with State Farm Insurance Company presented a proposal to provide that insurers do not have to provide uninsured and underinsured coverage under umbrella policies. The proposal addresses a problem that arose in the case of *Isenhour v. Universal*

Underwriters, 341 N.C. 597, 461 S.E.2d 317 (1995), in which the North Carolina Supreme Court held that, under the facts of the case, an insurer was required to provide underinsured coverage equal to the limits of the umbrella coverage in the policy. The concern of the industry is that the insurance company in the *Isenhour* case was required to provide coverage for a liability for which the company had not charged a premium. The Committee discussed the fact that companies may be able to address and solve the problem by revising their policies.

Ms. Marsha Cohen with Reinsurance Association of America (RAA) addressed the Committee next. Ms. Cohen presented two proposals to the Committee to repeal obsolete sections of Chapter 58 of the General Statutes. The first proposal is to repeal G.S. 58-30-160(b)(4), which governs the authority of insurance agents to "setoff" earned premiums from the amount owed to insurers. She argued that the purpose of G.S. 58-30-160(b)(4) is to prevent agents from withholding funds paid to them by their policyholders and due insolvent insurers. However, in 1990, North Carolina enacted the National Association of Insurance Commissioners model act governing the recovery of premiums owed, G.S. 58-30-175. Though not contradictory, G.S. 58-30-175 is a more specific statute and RAA is concerned that the courts may require policyholders to continue to pay premiums to insolvent companies unless G.S. 58-30-160(b)(4) is repealed.

The second proposal of RAA is to repeal G.S. 58-43-20 because it prohibits reinsurers licensed in North Carolina from reinsuring a surplus lines insurer, or nonadmitted insurer, which has business in North Carolina. Ms. Cohen argued that G.S. 58-43-20 inhibits risk-spreading because surplus lines companies are forced to purchase reinsurance from unlicensed reinsurers rather than financially strong reinsurance companies. Ms. Cohen also pointed out that laws passed and codified in Article 21 of Chapter 58 since the enactment of G.S. 58-43-20 regulate the placement of surplus lines business and impose financial

requirements on nonadmitted insurers. In addition, there are penalties for fraudulently transacting business in the State. (The written proposal of RAA is included in the Committee notebook in the Legislative Library.) Mr. Bill Hale with the Department of Insurance informed the Committee that the Department supports the recommendations of RAA.

Mr. Hale then presented six recommendations to the Committee. The first recommendation is to place the financial supervision, rehabilitation, and liquidation of continuing care retirement centers under Article 30 of Chapter 58 of the General Statutes. He explained to the Committee that, under present law, a retirement center that is having financial problems goes into rehabilitation or bankruptcy, with no intermediate supervisory steps or direction toward straightening out the financial problems. Expanding the scope of Article 30 to give the Commissioner authority to supervise the retirement centers would provide an intermediate step and assist retirement centers that are financially impaired.

The second proposal of the Department of Insurance is to revise G.S. 58-50-130(a)(2) to conform that section with the intent of Section 23A.1 of Chapter 507 of the 1995 Session Laws. In 1995, the North Carolina Health Planning Commission recommended that the law governing health care plans be revised, in part, to expand portability. Mr. Hale explained that portability is the ability of an individual to change employment without having to go through a new waiting period for coverage of a health condition that previously existed. The 1995 amendments to Chapter 58 allow credits for the period of time spent satisfying waiting periods under prior policies. Mr. Hale informed the Committee that under the current law an individual covered under a small employer group health plan is only credited with time that has elapsed under a prior group health plan.

The third recommendation of the Department is to clarify the definition of "nonfleet" for the purposes of private passenger motor vehicle insurance. The industry requested that the Department address a problem involving the classification of motor vehicles as fleet or

nonfleet vehicles for rating purposes. The intent of the Department's proposal was to correct the discrepancy that had arisen regarding the number of vehicles that could be included in a fleet policy. The Committee questioned whether the problem actually arose as a rating issue and discussed the fact that the draft presented did not solve the stated problem. The Committee requested that the Department consult with industry and present Committee staff with a proposal that addresses the problem.

The fourth proposal of the Department is the revision of Article 54 of Chapter 58, "Medicare Supplement Insurance Minimum Standards", to add a new section to Article 54 to give the Commissioner of Insurance the authority to adopt rules to conform Medicare supplement policies and certificates to federal laws and regulations. Mr. Hale explained that Congress amended the Social Security Act in 1994 to provide more protection to buyers of Medicare supplement insurance policies. Congress also directed the National Association of Insurance Commissioners (NAIC) to adopt rules and revise the model act governing Medicare supplement insurance policies accordingly and gave the states one year from the development of the NAIC rules and the revision of the model act to enact the changes. The Department recommended amending Article 54 of Chapter 58 of the General Statutes to conform to the 1994 amendments to the Social Security Act and to adopt the NAIC's proposed revisions to the model act.

Mr. Hale also presented a Department recommendation to revise G.S. 58-7-162(6), which governs allowable or admitted assets of insurance companies. G.S. 58-7-162(6) requires that, for all premiums that exceed 5% of the insurer's total premiums in the course of collection and not more than 90 days past due, agents must hold those premiums in a trust account, have a letter of credit issued to cover the amount, or obtain a financial guaranty bond. The Department recommends that the statute be revised to raise the threshold by which insurers must comply with G.S. 58-7-162(6) by requiring a trust account, letter of credit or guaranty

bond only if the amount of premiums "equals or exceeds five percent (5%) of the insurer's surplus as regards policyholders".

Finally, Mr. Hale presented a recommendation to revise the law governing workers' compensation loss costs ratings. The Committee requested that Mr. Hale present the proposal to the Legislative Research Commission's Study Committee on Workers' Compensation.

Committee counsel then presented the Committee with draft proposed legislation pursuant to directions to staff at the March 5 meeting of the Committee to confer with the Department of Insurance, the Beach Plan, and the industry in drafting proposed recommendations to the Legislative Research Commission. The drafts presented addressed the concerns and suggestions of the Committee regarding establishing a reserve fund for the Beach Plan, revising the participation formula of the Beach Plan to encourage more insurance companies to write voluntary policies in the beach area of the State, expanding the coverage offered by the Beach Plan, and revising the law governing consent to rate. The Committee discussed the proposals and debated whether the Beach Plan should be expanded to include homeowners and law and ordinance coverage as well as business income coverage. The Committee also discussed recommending the Department to study why companies refuse to write homeowners policies in the beach area of the State when they can cede the wind and hail risks to the Beach Plan. (See Findings and Recommendations)

The Committee directed staff to prepare the report to the Legislative Research Commission for approval at its April 18 meeting.

April 18, 1996

The Committee held its fifth meeting to discuss and adopt its recommendations and legislative proposals for the interim report to the Legislative Research Commission. Committee counsel reviewed the draft report and recommendations with the Committee.

Mr. Ruffin Bailey, representing the American Insurance Association (AIA), presented an alternative proposal to Recommendation and Legislative Proposal II, Revise Beach Plan Participation Formula. Mr. Bailey informed the Committee that the AIA is concerned that Legislative Proposal II gives too much discretion to the Association to revise the participation formula, without adequate standards and guidelines. The Committee discussed the concerns of the AIA and decided, after comments and discussion by the AIA and counsel on the constitutionality of the proposal, that the language in Legislative Proposal II should be retained as is.

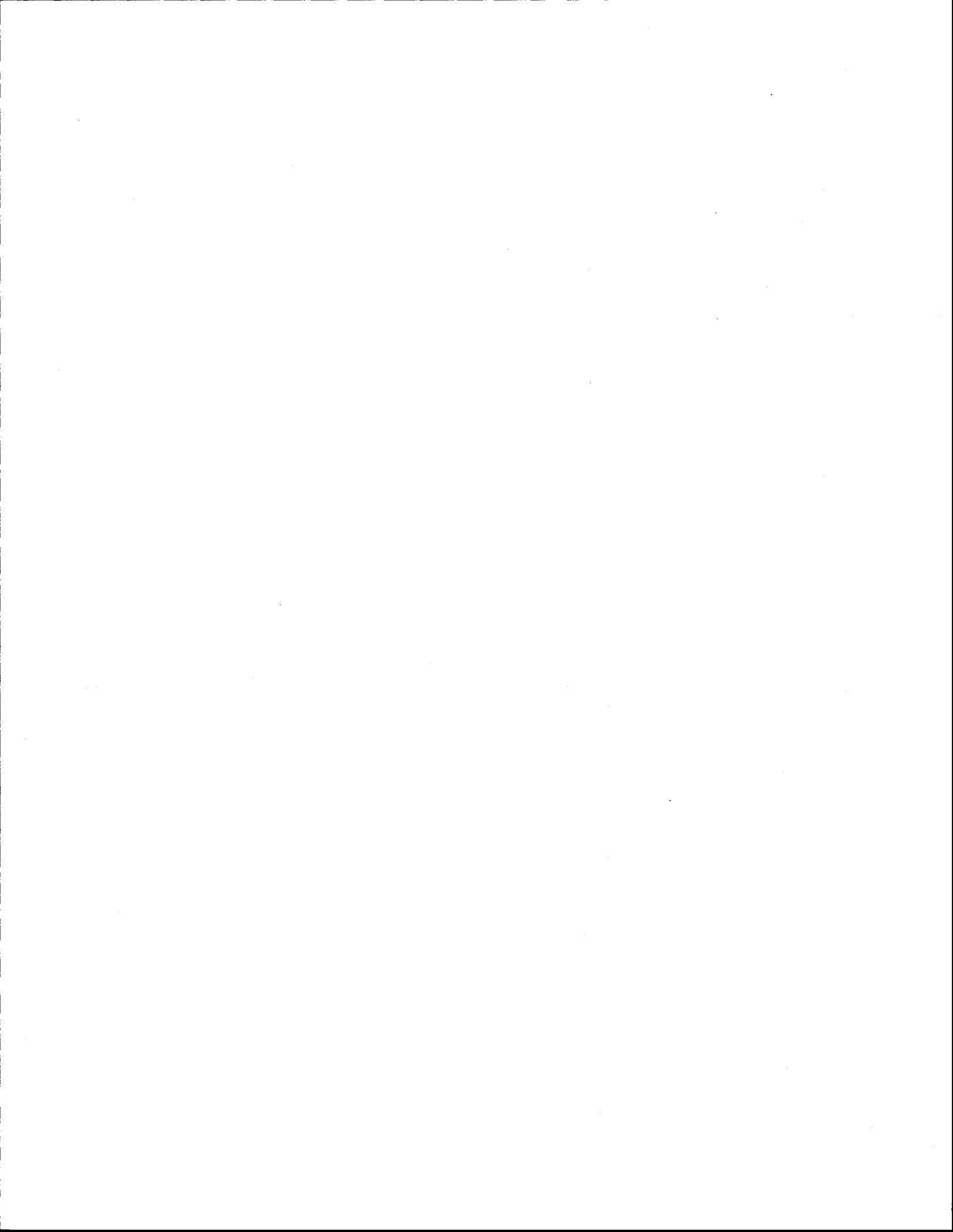
The Committee voted to adopt the recommendations and legislative proposals for the interim report with the following revisions:

1. Legislative Proposal II was revised to direct the Department to study the issue of why companies are not writing voluntary coverage for property in beach areas of the State when they may cede the wind risks to the Association.
2. Legislative Proposal V was revised to add a new section to Article 3 of Chapter 58 to provide that companies may exclude uninsured and underinsured motorist coverage from excess and umbrella policies.
3. Legislative Proposal VIII was revised to address concerns of the North Carolina Association of Non-Profit Homes for the Aging regarding how continuing care retirement centers are determined to be "insolvent".

COMMITTEE RECOMMENDATIONS AND LEGISLATIVE PROPOSALS

The Insurance and Insurance-Related Issues Study Committee recommends the following legislation to the 1996 Regular Session of the 1995 General Assembly. The Committee recommends twelve legislative proposals. Each proposal is followed by an explanation, which includes the Committee findings that support the proposal.

**RECOMMENDATION AND LEGISLATIVE
PROPOSAL I**



1 The General Assembly of North Carolina enacts:

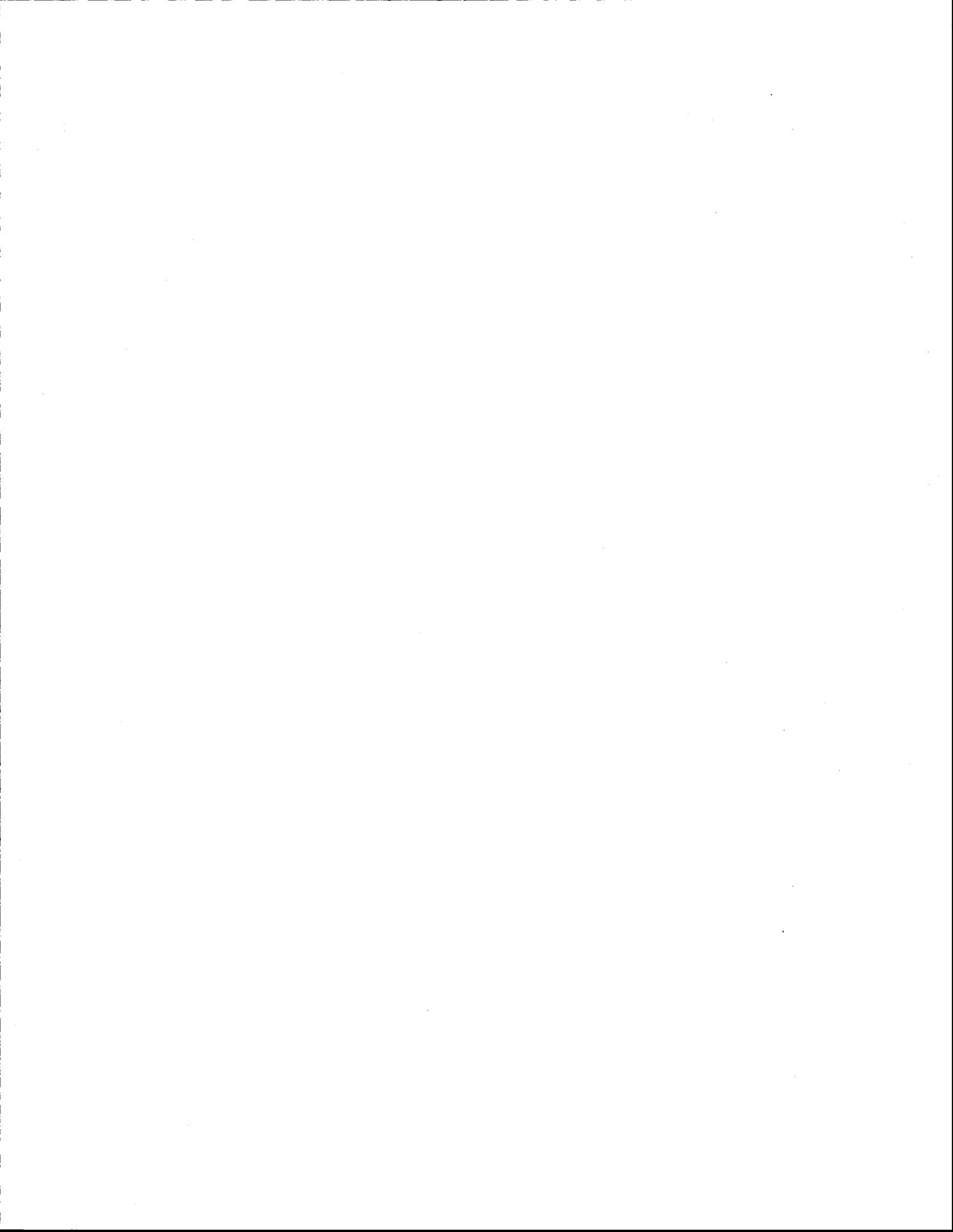
2 Section 1. The Department of Insurance and the North Carolina
3 Insurance Underwriting Association shall study the feasibility of and develop a
4 proposal for a reserve fund to operate exclusively for the purpose of paying
5 catastrophic losses incurred by wind risks insured under policies issued by the
6 Association and for protecting and advancing the State's interest in maintaining
7 insurance capacity in the State. The Department and the Association shall consult
8 with the United States Internal Revenue Service for the purpose of making the fund
9 exempt from federal taxation and may consider other options, including the purchase
10 of reinsurance, in connection with establishment of the fund. The Department and
11 the Association shall report to the Legislative Research Commission's Study
12 Committee on Insurance and Insurance-Related Issues on any findings and
13 recommendations on or before October 1, 1996, and shall report to the President Pro
14 Tempore of the Senate and the Speaker of the House of Representatives on the
15 proposal on or before March 1, 1997.

16 Sec. 2. This act is effective upon ratification.

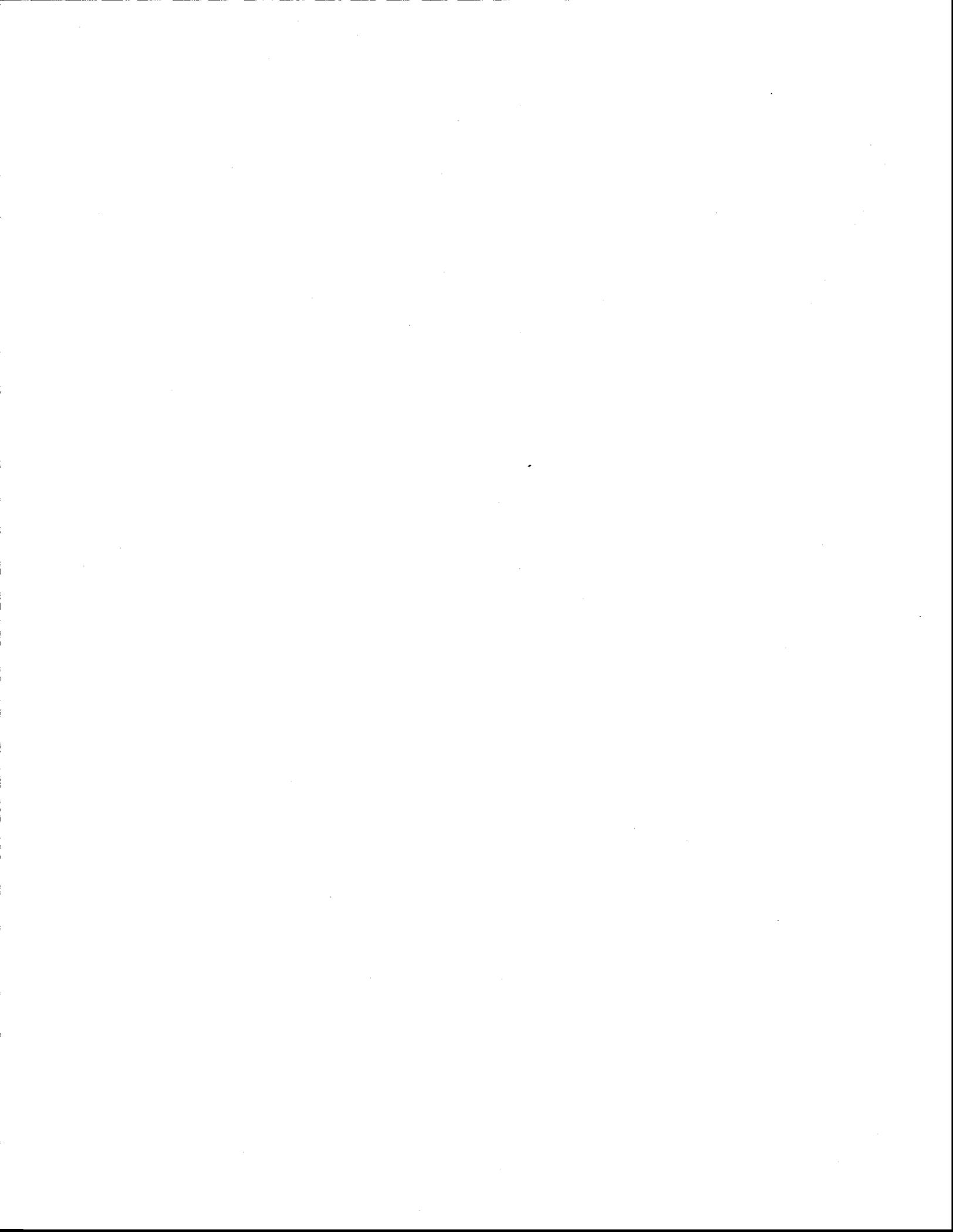
Beach Plan Reserve Fund

FINDINGS: The Department of Insurance and other interested parties, including many within the insurance industry, recommended to the Committee that Beach Plan profits be held in a pre-funded loss reserve fund rather than distributed to member companies. The state of Florida has had great success with the catastrophe fund it established after Hurricane Andrew. The advantage of the fund is to have the means in place to pay catastrophic losses in the event of a major hurricane. Many insurers are unable or unwilling to maintain reserves, a surplus, or reinsurance sufficient to enable the insurers to pay all claims in full in the event of a catastrophe. This inability of the private sector to maintain sufficient capacity to pay all claims in full endangers the public health, safety, and welfare and endangers the economy of the State. A tax-exempt reserve fund would ensure that insurance claims would be paid in the event of a catastrophe and that damaged structures would be repaired or reconstructed as soon as possible.

RECOMMENDATION AND ANALYSIS OF LEGISLATIVE PROPOSAL I: The bill short titled "Beach Plan Reserve Fund" directs the Department of Insurance and the North Carolina Insurance Underwriting Association (Beach Plan) to study the feasibility of and to develop a proposal for a tax-exempt reserve fund for the purpose of paying catastrophic losses incurred by wind risks insured under policies issued by the Association. The Department and the Association are required to report to the Committee on the proposal on or before October 1, 1996, and to the President Pro Tempore of the Senate and the Speaker of the House of Representatives on or before March 1, 1997.



**RECOMMENDATION AND LEGISLATIVE
PROPOSAL II**



1 each member in the losses of the Association shall be reduced accordingly. Any
2 insurer authorized to write and engage in writing any insurance, the writing of which
3 requires ~~such the~~ insurer to be a member of the Association, pursuant to ~~the~~
4 ~~provisions of G.S. 58-45-10, who is authorized and engaged in writing such insurance~~
5 ~~after April 17, 1969,~~ shall become a member of the Association on the January 1
6 immediately following ~~such~~ authorization and the determination of ~~such the~~ insurer's
7 participation in the Association shall be made as of the date of ~~such~~ membership in
8 the same manner as for all other members of the Association."

9 Sec. 2. G.S. 58-45-5(6) is repealed.

10 Sec. 3. The directors of the North Carolina Insurance Underwriting
11 Association (Beach Plan), in consultation with the Department of Insurance, shall
12 develop a plan to revise the participation formula of the Plan in a manner that
13 encourages insurance companies to write voluntary policies in the beach area or
14 other areas of the State and to write themselves out of the losses of the Plan, to apply
15 to the 1996-97 fiscal year. In connection with the development of the plan, the
16 Department and Association shall determine the reasons insurance companies are not
17 writing voluntary coverage on properties in the beach area of the State, considering,
18 among other factors, that the companies may cede wind risks to the Association. The
19 directors shall report to the Legislative Research Commission's Study Committee on
20 Insurance and Insurance-Related Issues on their findings and the revised formula on
21 or before October 15, 1996.

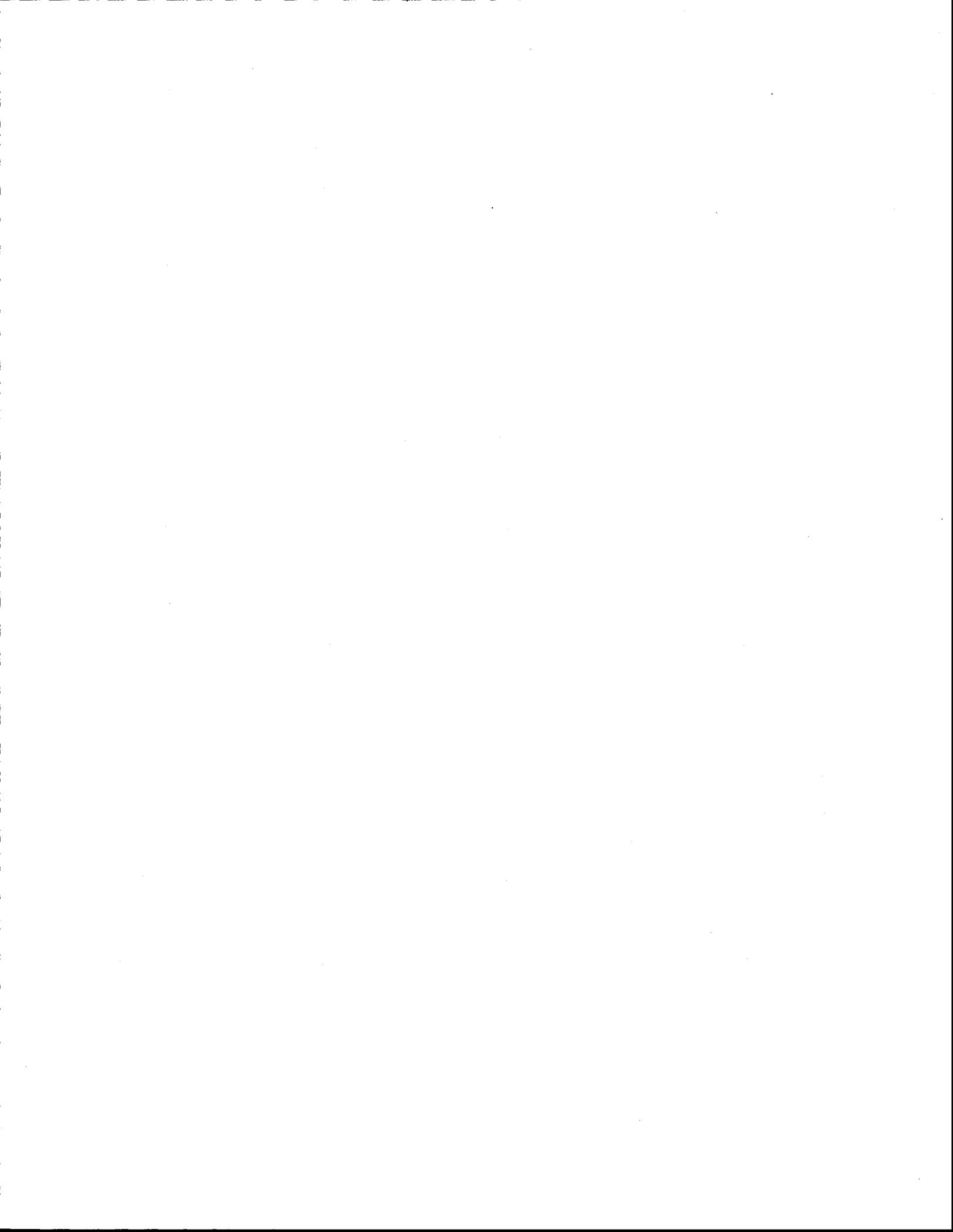
22 Sec. 4. Sections 1 and 2 of this act become effective October 1, 1996, and
23 apply to policies issued or renewed on or after that date. The remainder of this act is
24 effective upon ratification.

Revise Beach Plan Participation Formula

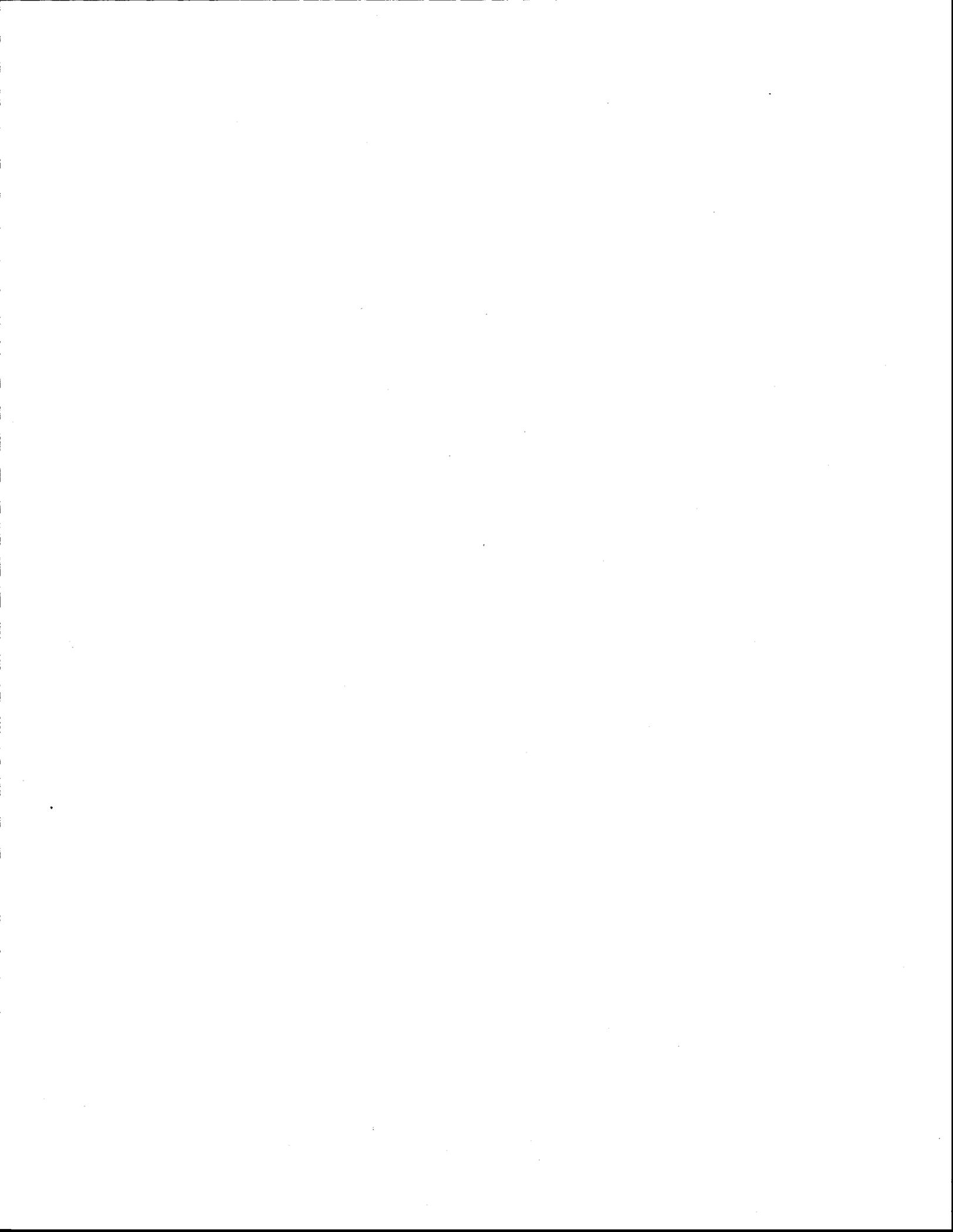
FINDINGS: The Committee finds that the majority of voluntary policies written in the beach area of the State are written by just a few of the insurers licensed in the State. In addition, most of the burden of insuring property in the beach area of the State is placed on the Beach Plan, which was established originally to be a residual market. The economy of the State and the citizens that live in the beach area of the State would benefit from the increased competition that would result from more companies writing voluntary policies in the beach area.

RECOMMENDATION AND ANALYSIS OF LEGISLATIVE PROPOSAL II: The Committee recommends and the bill short titled "Revise Beach Plan Participation Formula" directs, that the directors of the North Carolina Insurance Underwriting Association (Beach Plan), with the approval of the Commissioner, revise the participation of and credits to member companies to encourage insurance companies to write voluntary policies in the beach area of the State and to write themselves out of the losses of the Plan. Section 1 of the bill revises G.S. 58-45-25 to delete the statutory requirements for participation in the Plan and to give the Association the authority to determine participation and credits in the Plan, with the approval of the Commissioner of Insurance. The standards and guidelines by which the Association and Commissioner shall revise the participation formula are set forth in Section 3 of the bill. Section 2 is a conforming change that repeals G.S. 58-45-5(6), the definition of 'net direct premium', since the revision to G.S. 58-45-25 deletes the reference to net direct premium.

In connection with the revision of the participation formula, the Department of Insurance and the Association are required to determine the reasons insurance companies are not writing voluntary policies in the beach area of the State in Section 3 of the bill and to report to the Committee on or before October 15, 1996.



**RECOMMENDATION AND LEGISLATIVE
PROPOSAL III**

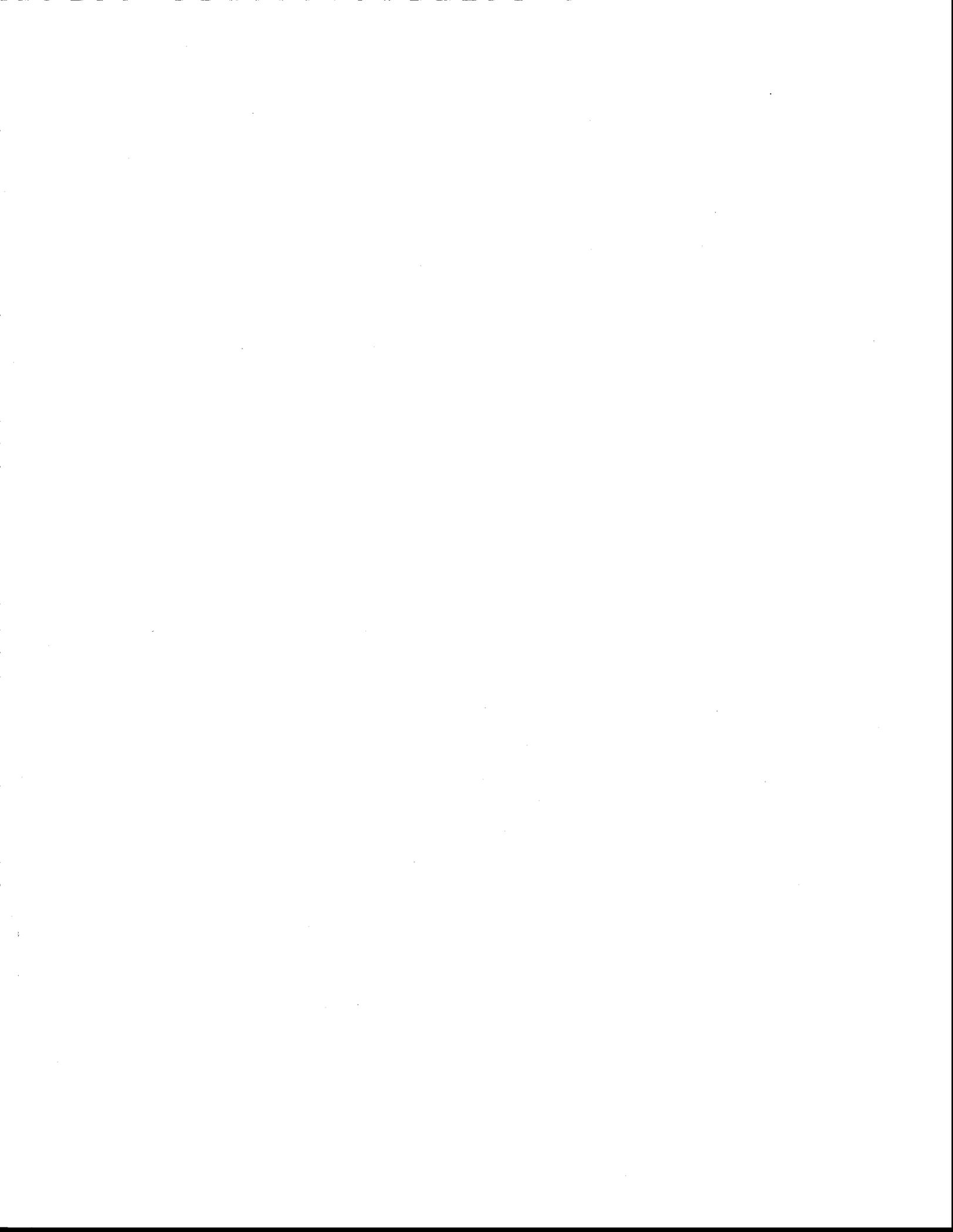


Beach Plan Additional Coverage

FINDINGS: Under current law, the North Carolina Insurance Underwriting Association does not offer business income coverage. Property owners in the beach area have difficulty obtaining affordable business income coverage from the private sector and the economy of the beach area would benefit from affordable business income coverage.

RECOMMENDATION AND ANALYSIS OF LEGISLATIVE PROPOSAL III: The Committee recommends, and the bill short titled "Beach Plan Additional Coverage" proposes, that the North Carolina Insurance Underwriting Association (Beach Plan) offer business income coverage in addition to the other insurance coverages offered by the Plan.

**RECOMMENDATION AND LEGISLATIVE
PROPOSAL IV**



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

S/H

D

95-LTZ-136(3.21)

(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Revise Consent to Rate.

(Public)

Sponsors: .

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THAT INSURERS ARE NOT REQUIRED TO OBTAIN
3 WRITTEN CONSENT TO RATE ON EACH POLICY RENEWAL AS RECOMMENDED
4 BY THE LEGISLATIVE RESEARCH COMMISSION'S COMMITTEE ON INSURANCE
5 AND INSURANCE-RELATED ISSUES.
6 The General Assembly of North Carolina enacts:
7 Section 1. G.S. 58-36-30 reads as rewritten:
8 "§ 58-36-30. Deviations.
9 (a) No insurer, officer, agent or representative thereof shall
10 knowingly issue or deliver or knowingly permit the issuance or
11 delivery of any policy of insurance in this State which does not
12 conform to the rates, rating plans, classifications, schedules,
13 rules and standards made and filed by the Bureau. However, an
14 insurer may deviate from the rates promulgated by the Bureau
15 provided the insurer has filed the deviation to be applied both
16 with the Bureau and the Commissioner, and provided the ~~said~~
17 deviation is uniform in its application to all risks in the State
18 of the class to which ~~such~~ the deviation is to apply; and
19 provided such deviation is approved by the Commissioner. The
20 Commissioner shall approve proposed deviations if ~~the same~~ they
21 do not render the rates excessive, inadequate or unfairly
22 discriminatory. If approved, the deviation may thereafter be
23 amended, subject to the provisions of this subsection. The
24 deviation may be terminated only if the deviation ~~will have~~ has

1 been in effect for a period of six months before the effective
2 date of the termination and the insurer notifies the Commissioner
3 of the termination no later than 15 days before the effective
4 date of the termination.

5 (b) A rate in excess of that promulgated by the Bureau may be
6 charged by an insurer on any specific risk ~~provided such if the~~
7 higher rate is charged in accordance with ~~the approval of rules~~
8 adopted by the Commissioner and with the knowledge and written
9 consent of the insured. The insurer is not required to obtain
10 the written consent of the insured on each renewal of the policy
11 if each policy renewal states that the rates are greater than
12 those rates that are applicable in the State of North Carolina.
13 The insurer shall retain the signed consent form and other policy
14 information for each insured and make this information available
15 to the Commissioner, upon request of the Commissioner. This
16 subsection may be used to provide motor vehicle liability
17 coverage limits above those required under Article 9A of Chapter
18 20 of the General Statutes and above those cedable to the
19 Facility under Article 37 of this Chapter to persons whose
20 personal excess liability insurance policies require that they
21 maintain specific higher liability coverage limits. ~~All data~~
22 ~~filed with~~ Any data obtained by the Commissioner under this
23 subsection ~~are is~~ is proprietary and confidential and ~~are not public~~
24 ~~records is not a public record~~ under G.S. 132-1 or G.S. 58-2-100.

25 (c) Any deviation with respect to workers' compensation and
26 employers' liability insurance written in connection therewith as
27 filed under subsection (a) of this section shall apply uniformly
28 to all classifications. Any approved rate under subsection (b) of
29 this section with respect to workers' compensation and employers'
30 liability insurance written in connection therewith shall be
31 furnished to the Bureau.

32 (d) Notwithstanding any other provision of law prohibiting
33 insurance rate differentials based on age, with respect to
34 nonfleet private passenger motor vehicle insurance under the
35 jurisdiction of the Bureau, any member of the Bureau may apply
36 for and use in this State, subject to the Commissioner's
37 approval, a downward deviation in the rates for insureds who are
38 55 years of age or older."

39 Sec. 2. G.S. 58-40-30(c) reads as rewritten:

40 "(c) Upon written consent of the ~~insured, stating his reasons~~
41 ~~therefor,~~ insured stating the insured's reasons, a rate or
42 deductible or both in excess of that provided by an otherwise
43 applicable filing may be used on a specific ~~risk, provided that~~
44 ~~it is filed with the Commissioner in accordance with subsection~~

1 ~~(a) of this section.~~ risk in accordance with rules adopted by the
2 Commissioner. The insurer is not required to obtain the written
3 consent of the insured on each renewal of the policy if each
4 policy renewal states that the rates or deductible, or both, are
5 greater than those rates or deductibles, or both, that are
6 applicable in the State of North Carolina. The insurer shall
7 retain the signed consent form and other policy information for
8 each insured and make this information available to the
9 Commissioner, upon request of the Commissioner."

10 Sec. 3. This act becomes effective October 1, 1996, and
11 applies to policies issued or renewed on or after that date.

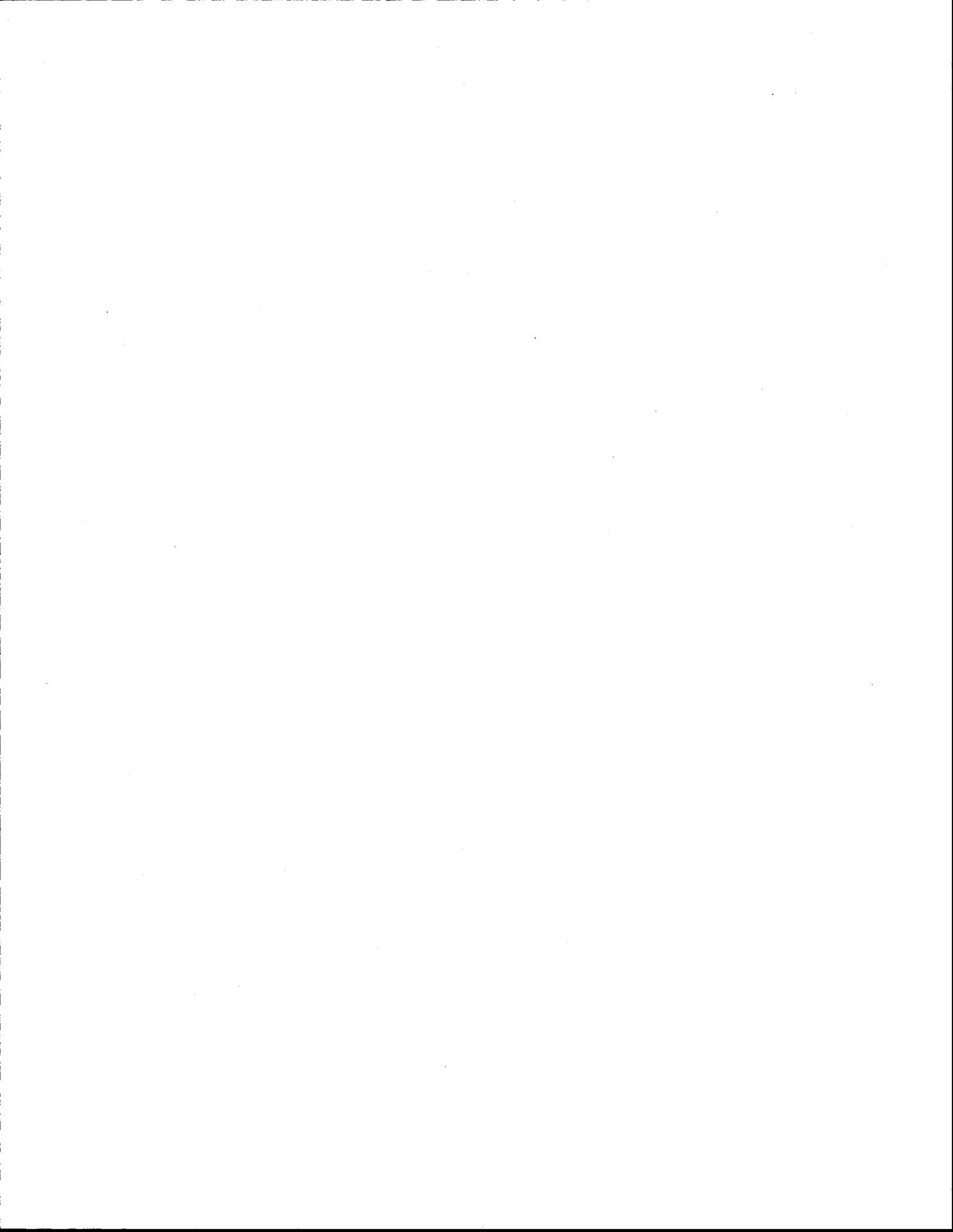
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Revise Consent to Rate Statutes

FINDINGS: Insurers are allowed to charge more than the standard rate for higher risks if the insured signs a consent form. Insurers are required, pursuant to administrative rule, to obtain the written consent of an insured each time the policy is renewed. The Committee finds that the requirement is burdensome and has increased the administrative costs of the industry, which are passed on to the consumer.

RECOMMENDATION AND ANALYSIS OF LEGISLATIVE PROPOSAL IV: Upon recommendation of the Committee, the bill short titled "Revise Consent to Rate" amends G.S. 58-36-30 and G.S. 58-40-30(c) to provide that an insurer is not required to obtain the insured's written consent to charge rates higher than the standard rate on each policy renewal if the renewal indicates the rates are higher. The insurer is required to retain the insured's written consent with the other policy information and make it available to the Commissioner upon request.

**RECOMMENDATION AND LEGISLATIVE
PROPOSAL V**



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

S

D

SENATE DRS5680-LTZ144B(3.21)

Short Title: Uninsured/Underinsured Coverage.

(Public)

Sponsors:

Referred to:

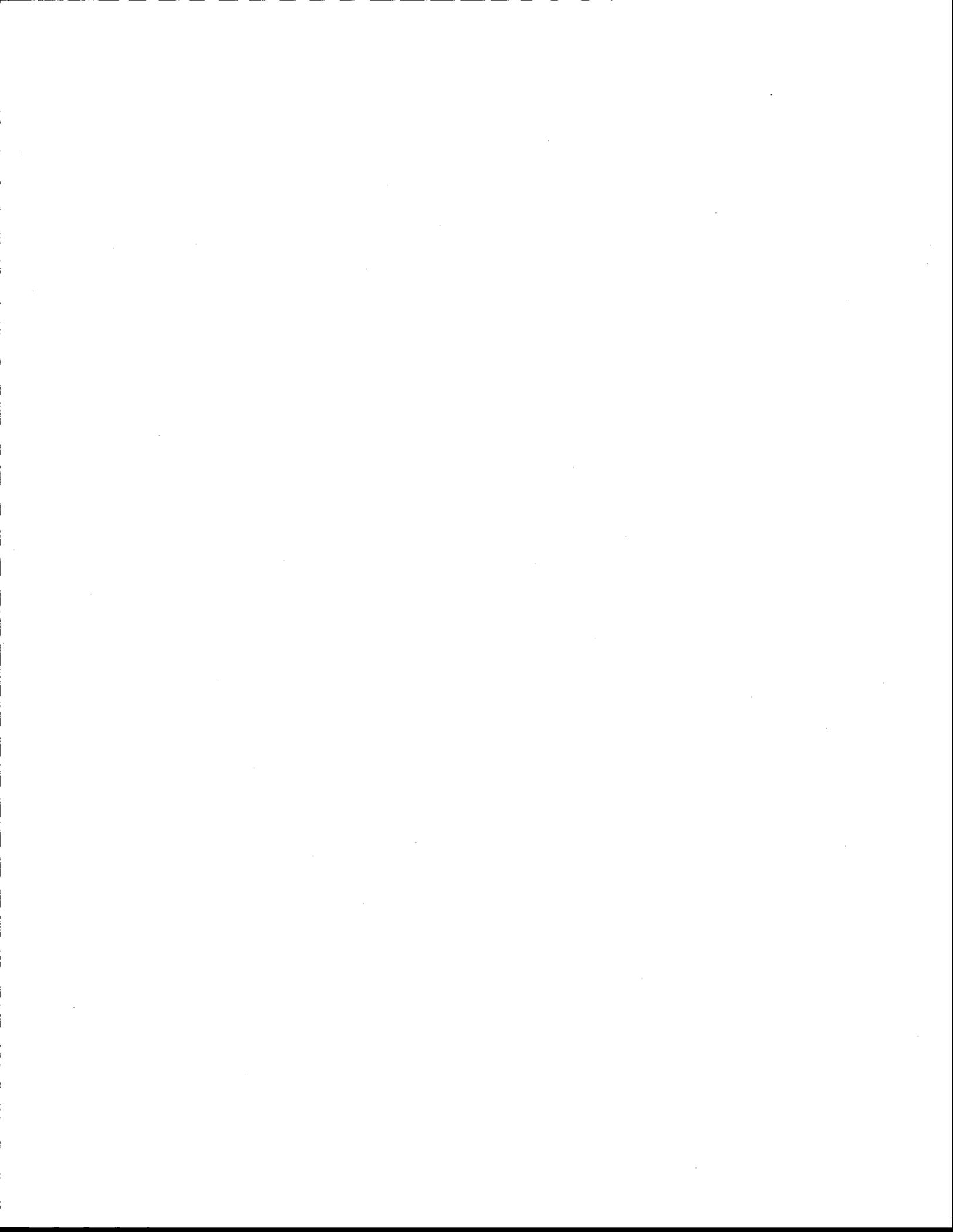
1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THAT UNINSURED AND UNDERINSURED
3 MOTORIST COVERAGE MAY BE LIMITED OR EXCLUDED UNDER
4 EXCESS OR UMBRELLA POLICIES AS RECOMMENDED BY THE
5 LEGISLATIVE RESEARCH COMMISSION'S COMMITTEE ON INSURANCE
6 AND INSURANCE-RELATED ISSUES.
7 The General Assembly of North Carolina enacts:
8 Section 1. Article 3 of Chapter 58 is amended by adding a new section
9 to read:
10 "**§ 58-3-152. Excess liability policies; uninsured and underinsured motorist coverage.**
11 With respect to personal and commercial excess or umbrella liability policy forms
12 or coverage, an insurer may limit or exclude coverage for uninsured motorist
13 coverage set forth in G.S. 20-279.21(b)(3) and underinsured motorist coverage set
14 forth in G.S. 20-279.21(b)(4)."
15 Sec. 2. This act becomes effective October 1, 1996, and applies to
16 policies issued or renewed on or after that date.

Uninsured and Underinsured Motorist Coverage Limits

FINDINGS: G.S. 20-279.21 requires insurers to offer uninsured and underinsured motorist coverage in an amount "equal to the highest limit of bodily injury and property damage liability coverage for any one vehicle in the policy" if the insured does not reject the coverage or select different coverage limits in the policy. The North Carolina Supreme Court has held that, unless there is a rejection or selection of different coverage limits in writing, uninsured and underinsured coverage must be provided in the amount of any umbrella or excess coverage. *Isenhour v. Universal Underwriters*, 341 N.C. 597, 461 S.E.2d 317 (1995). In the facts of the case, there was testimony that the insured had selected a different coverage amount by specific endorsement. However, the Court held that there was no evidence in the record that the insured had rejected in writing the uninsured or underinsured motorist coverage for the umbrella section of the policy or had selected a different limit. The Committee finds that Chapter 58 should be amended to provide that insurers may limit or exclude coverage for uninsured and underinsured motorist coverage under umbrella or excess policy forms.

RECOMMENDATION AND ANALYSIS OF LEGISLATIVE PROPOSAL V: This proposal amends Article 3 of Chapter 58 to add a new section that gives insurers the authority to limit or exclude uninsured and underinsured motorist coverage under umbrella or excess policies.

**RECOMMENDATION AND LEGISLATIVE
PROPOSAL VI**

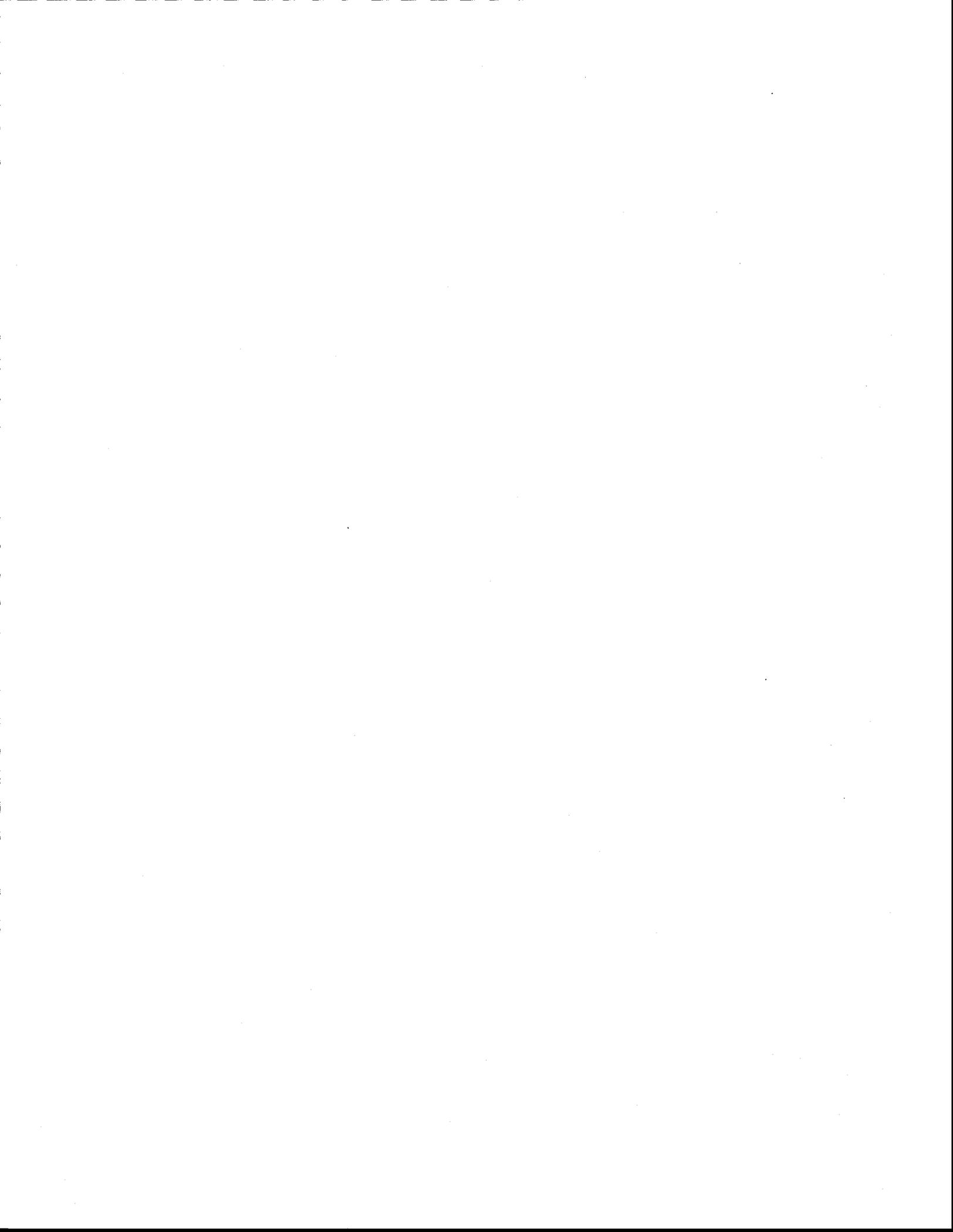


Conform Receivership Laws

FINDINGS: In 1989, North Carolina adopted the National Association of Insurance Commissioners model act regarding insurers' authority to recover premiums owed, codified at G.S. 58-30-175. G.S. 58-30-175 provides that "[e]xcept as provided in G.S. 58-30-160, credits or setoffs or both are not allowed to an agent, broker, or premium finance company for any amounts advanced to the insurer by the agent, broker, or premium finance company on behalf of, but in the absence of a payment by, the insured." G.S. 58-30-160(b)(4) provides that no setoff shall be allowed in favor of a person against an impaired or insolvent insurance company if the person is obligated to pay the insurance company earned premiums. G.S. 58-30-160(c) allows setoffs for certain expenses from the balances payable to insurers. The Committee finds that G.S. 58-30-160(b)(4) is unnecessary and may cause confusion in the interpretation of G.S. 58-30-175 since G.S. 58-30-175 addresses the same subject in a more general manner.

RECOMMENDATION AND ANALYSIS OF LEGISLATIVE PROPOSAL VI: The Committee recommends, and includes in its draft legislation, that G.S. 58-30-160(b)(4) be repealed.

**RECOMMENDATION AND LEGISLATIVE
PROPOSAL VII**

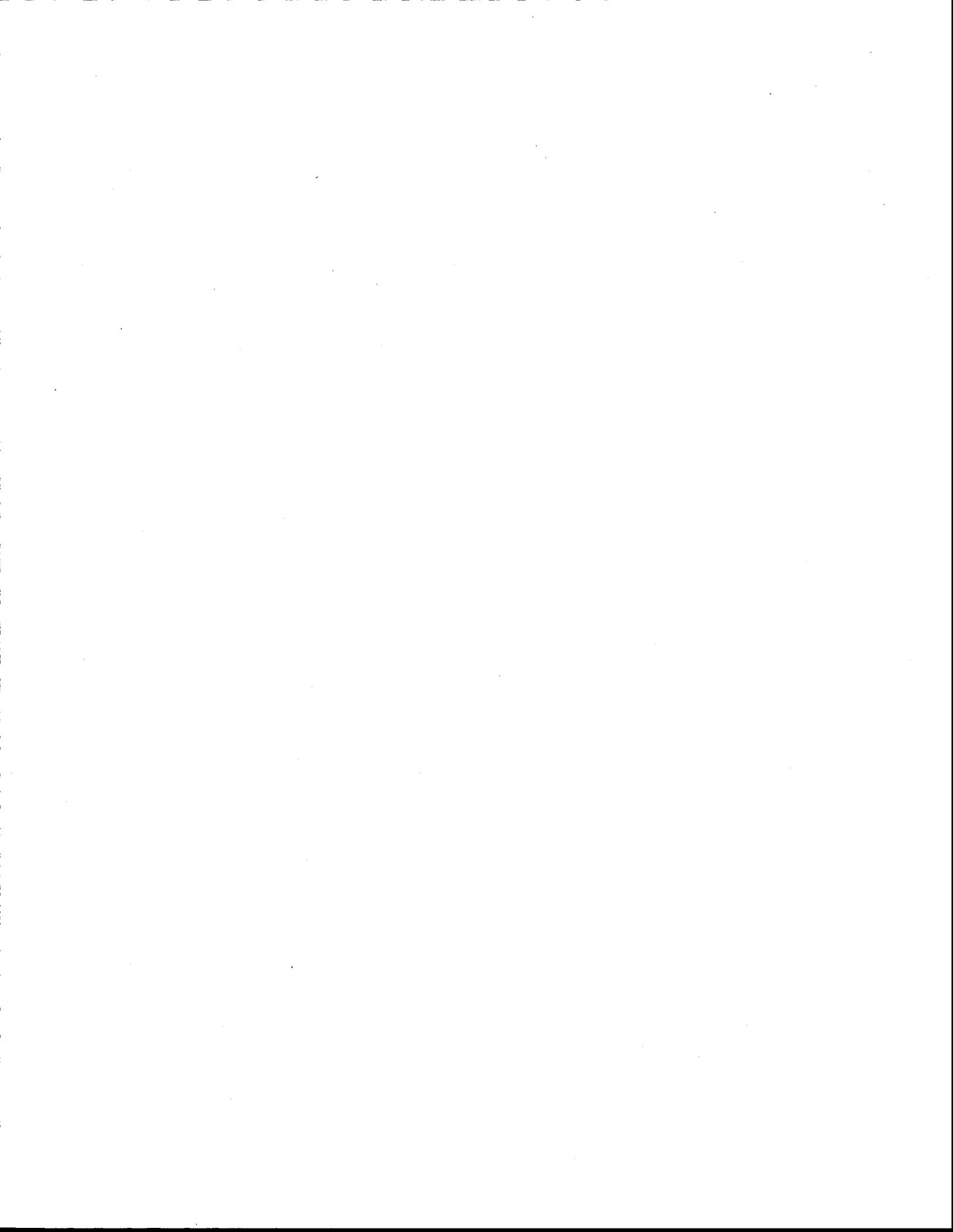


Repeal Reinsurance Restrictions

FINDINGS: G.S. 58-43-20 prohibits reinsurers licensed in North Carolina from reinsuring a surplus lines insurer, or nonadmitted insurer, which has business in North Carolina. The Committee finds that G.S. 58-43-20 inhibits risk-spreading because surplus lines companies are forced to purchase reinsurance from unlicensed reinsurers rather than financially strong reinsurance companies.

RECOMMENDATION AND LEGISLATIVE PROPOSAL VII: The Committee recommends, and includes in its draft legislation, the repeal of G.S. 58-43-20.

**RECOMMENDATION AND LEGISLATIVE
PROPOSAL VIII**



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

S/H

D

95-LTZ-138A(3.21)

(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Continuing Care Facility Supervision. (Public)

Sponsors: .

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR MORE EFFECTIVE FINANCIAL SUPERVISION,
3 REHABILITATION, AND LIQUIDATION PROCEDURES FOR CONTINUING CARE
4 RETIREMENT CENTERS AND TO PROVIDE THAT CONTINUING CARE
5 AGREEMENTS ARE SUBORDINATE TO THE COST OF ADMINISTRATION IN
6 LIQUIDATION AS RECOMMENDED BY THE LEGISLATIVE RESEARCH
7 COMMISSION'S COMMITTEE ON INSURANCE AND INSURANCE-RELATED
8 ISSUES.
9 The General Assembly of North Carolina enacts:
10 Section 1. G.S. 58-30-5(5) reads as rewritten:
11 "(5) All persons subject to Articles ~~65 through 67~~ 64,
12 65 and 66, or 67 of this Chapter; except to the
13 extent there is a conflict between the provisions
14 of this Article and the provisions of those
15 Articles, in which case those Articles will
16 govern."
17 Sec. 2. G.S. 58-30-10(14) reads as rewritten:
18 "(14) 'Insurer' means any entity licensed under
19 Articles 7, 16, 26, 49, 65, or 67 of this Chapter
20 and any employer that has furnished to the
21 Commissioner satisfactory proof of its financial
22 responsibility under G.S. 97-93(a)(2). For

1 purposes of this Article, 'insurer' also includes
2 continuing care retirement centers licensed under
3 Article 64 of this Chapter."

4 Sec. 3. G.S. 58-64-45 reads as rewritten:

5 "§ 58-64-45. Rehabilitation or Supervision, rehabilitation, and
6 liquidation.

7 (a) If, at any time, the Commissioner determines, after notice
8 and an opportunity for the provider to be heard, that:

9 (1) A portion of an entrance fee escrow account
10 required to be maintained under this Article has
11 been or is proposed to be released in violation of
12 this Article;

13 (2) A provider has been or will be unable, in such a
14 manner as may endanger the ability of the provider,
15 to fully perform its obligations pursuant to
16 contracts for continuing care, to meet the
17 projected financial data previously filed by the
18 provider;

19 (3) A provider has failed to maintain the escrow
20 account required under this Article; or

21 (4) A facility is bankrupt or insolvent, or in imminent
22 danger of becoming bankrupt or insolvent;

23 the Commissioner may commence a supervision proceeding pursuant
24 to Article 30 of this Chapter or may apply to the Superior Court
25 of Wake County or to the federal bankruptcy court that may have
26 previously taken jurisdiction over the provider or facility for
27 an order directing the Commissioner or authorizing the
28 Commissioner to appoint a trustee to rehabilitate or to liquidate
29 a facility, facility in accordance with Article 30 of this
30 Chapter.

31 ~~(b) An order to rehabilitate a facility shall direct the~~
32 ~~Commissioner or trustee to take possession of the property of the~~
33 ~~provider and to conduct the business thereof, including the~~
34 ~~employment of such managers or agents as the Commissioner or~~
35 ~~trustee may deem necessary and to take such steps as the Court~~
36 ~~may direct toward removal of the causes and conditions which have~~
37 ~~made rehabilitation necessary. The definition of 'insolvency' or~~
38 ~~'insolvent' in G.S. 58-30-10(13) shall not apply to facilities~~
39 ~~under this Article. Rules adopted by the Commissioner shall~~
40 ~~define and describe 'insolvency' or 'hazardous financial~~
41 ~~condition' for facilities under this Article. G.S. 58-30-12~~
42 ~~shall not apply to facilities under this Article.~~

43 (c) If, at any time, the Court finds, upon petition of the
44 ~~Commissioner, trustee~~ Commissioner or provider, or on its own

1 motion, that the objectives of an order to rehabilitate a
2 facility have been accomplished and that the facility can be
3 returned to the provider's management without further jeopardy to
4 the residents of the facility, the Court may, upon a full report
5 and accounting of the conduct of the facility's affairs during
6 the rehabilitation and of the facility's current financial
7 condition, terminate the rehabilitation and, by order, return the
8 facility and its assets and affairs to the provider's management.

9 ~~(d) If, at any time, the Commissioner determines that further~~
10 ~~efforts to rehabilitate the provider would be useless, the~~
11 ~~Commissioner may apply to the Court for an order of liquidation.~~

12 ~~(e) An order to liquidate a facility:~~

13 ~~(1) May be issued upon application of the Commissioner~~
14 ~~whether or not there has been issued a prior order~~
15 ~~to rehabilitate the facility.~~

16 ~~(2) Shall act as a revocation of the license of the~~
17 ~~facility under this Article.~~

18 ~~(3) Shall include an order directing the Commissioner~~
19 ~~or a trustee to marshal and liquidate all of the~~
20 ~~provider's assets located within this State.~~

21 (f) In applying for an order to rehabilitate or liquidate a
22 facility, the Commissioner shall give due consideration in the
23 application to the manner in which the welfare of persons who
24 have previously contracted with the provider for continuing care
25 may be best served.

26 (g) An order for rehabilitation ~~under this section~~ shall be
27 refused or vacated if the provider posts a bond, by a recognized
28 surety authorized to do business in this State and executed in
29 favor of the Commissioner on behalf of persons who may be found
30 entitled to a refund of entrance fees from the provider or other
31 damages in the event the provider is unable to fulfill its
32 contracts to provide continuing care at the facility, in an
33 amount determined by the Court to be equal to the reserve funding
34 that would otherwise need to be available to fulfill such
35 obligations."

36 Sec. 4. G.S. 58-64-60 reads as rewritten:

37 "§ 58-64-60. Agreements as preferred claims on liquidation.

38 In the event of liquidation of a provider, all continuing care
39 agreements executed by the provider shall be deemed preferred
40 claims against all assets owned by the provider; provided,
41 however, such claims shall be subordinate to the liquidator's
42 cost of administration or any secured claim."

43 Sec. 5. This act becomes effective October 1, 1996, and
44 applies to continuing care retirement centers that are determined

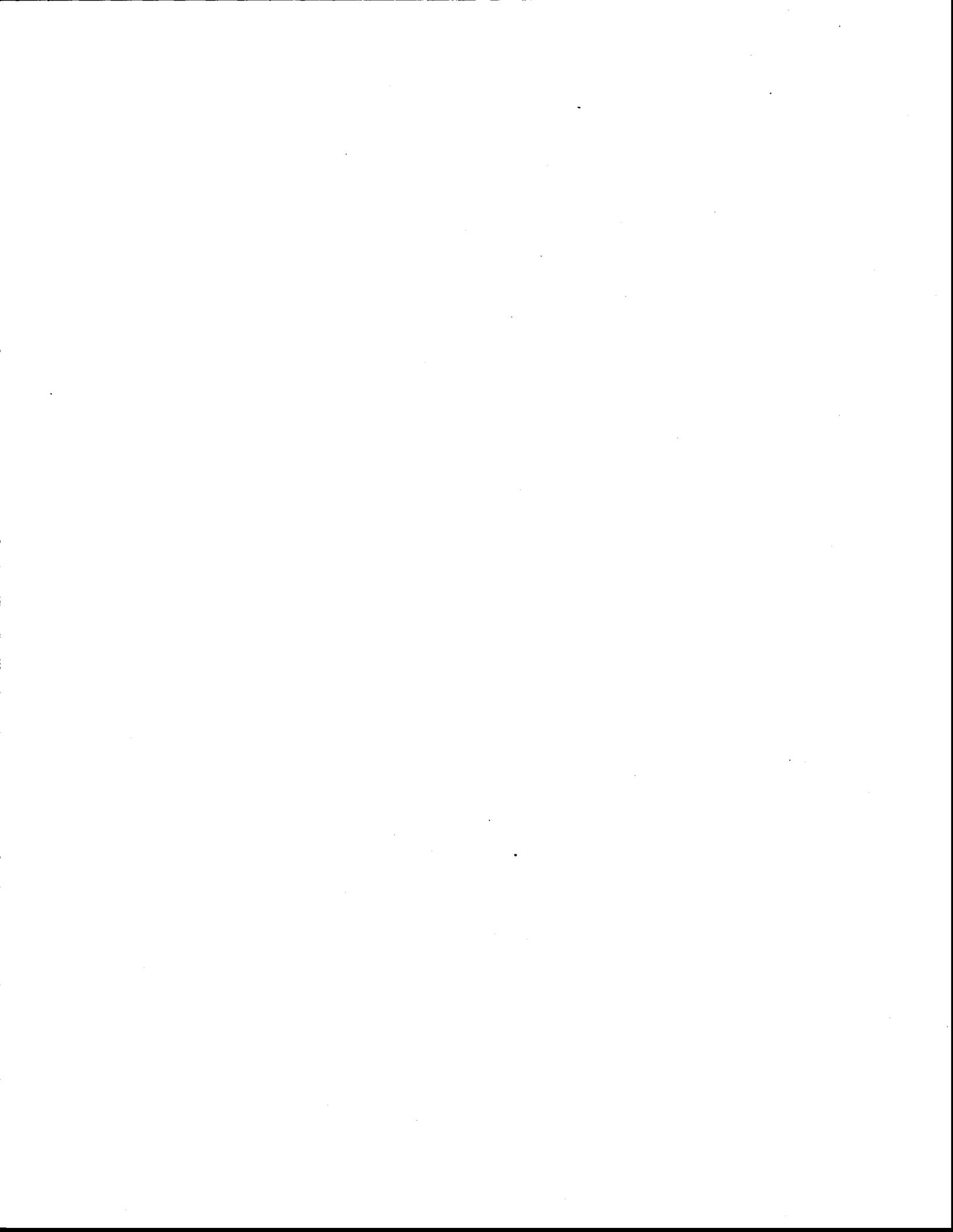
1 by the Commissioner of Insurance to be financially impaired on or
2 after that date.

3

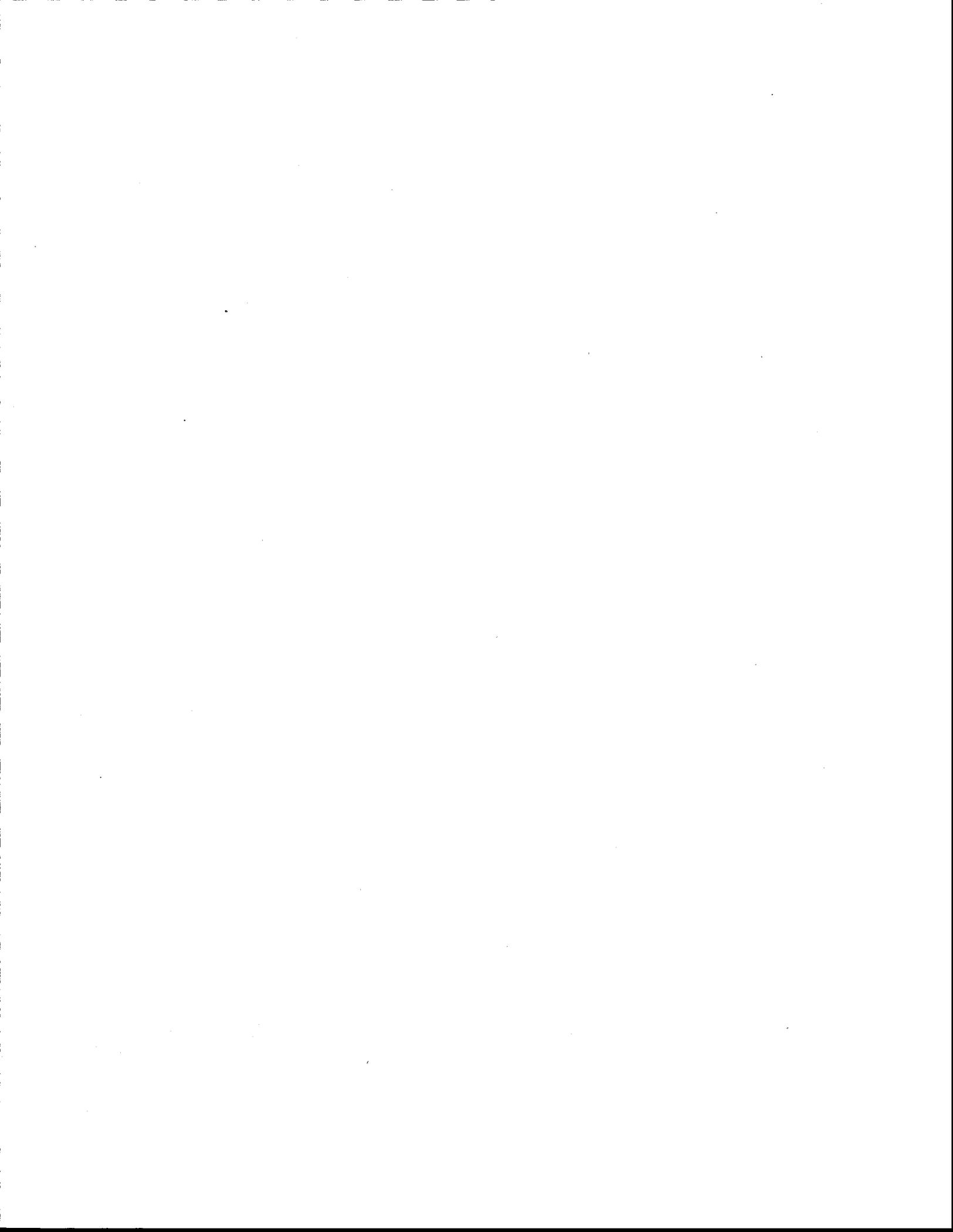
Financial Supervision of Continuing Care Retirement Centers

FINDINGS: The Committee finds that the law that governs the rehabilitation and liquidation of continuing care retirement centers, Article 64 of Chapter 58, does not give the Commissioner authority to supervise centers that are financially impaired and intervene before an order for rehabilitation or liquidation must be issued. Article 30 of Chapter 58 governs the supervision, rehabilitation, and liquidation of insurers and provides for supervision of companies before their financial condition deteriorates to the point that rehabilitation or liquidation is required. The Commissioner should have the authority to assist financially impaired retirement centers in straightening out their financial problems before rehabilitation or liquidation is necessary.

RECOMMENDATION AND LEGISLATIVE PROPOSAL VIII: Upon the recommendation of the Committee, the bill short titled "Continuing Care Facility Supervision" amends Article 30 of Chapter 58 in Sections 1 and 2 to provide that continuing care retirement centers licensed under Article 64 of Chapter 58 are governed by the provisions of Article 30. Section 3 of the bill amends the section of Article 64 that governs the rehabilitation and liquidation of continuing care retirement centers, G.S. 58-64-45, by repealing the provisions of the section that give the Commissioner authority to appoint trustees for rehabilitation of facilities and to apply for an order of liquidation and by adding language that provides that the Commissioner may commence a supervision proceeding or apply to the Superior Court of Wake County for an order directing or authorizing the Commissioner to rehabilitate or liquidate a center in accordance with Article 30. Section 4 of the bill amends G.S. 58-64-60 to provide that claims of continuing care agreements shall be subordinate to a liquidator's cost of administration in the event of liquidation.



**RECOMMENDATION AND LEGISLATIVE
PROPOSAL IX**



Small Employer Health Benefit Plans

FINDINGS: In 1995, the General Assembly amended Chapter 58 in Section 23A.1 of Chapter 507 of the 1995 Session Laws to require that insurers give credit for the time spent satisfying the waiting period for preexisting conditions under a previous health insurance plan, regardless of the type of plan. Before the 1995 amendments, credit was given only for prior group plans. A drafting oversight resulted in one reference to "group" plans being left in G.S. 58-50-130(a)(2), which should be removed to conform the statute to the intent of the 1995 legislation.

RECOMMENDATION AND ANALYSIS OF LEGISLATIVE PROPOSAL IX: The Committee recommends, and includes in its draft legislation, that G.S. 58-50-130(a)(2) be revised to delete the word "group" as used in reference to health benefit plans. By deleting the reference to "group", the bill requires health benefit plans of small employers to credit the time an employee or dependent of an employee was covered under a previous health plan, regardless of the type of plan, when determining whether a preexisting condition provision applies to the employee or dependent.

**RECOMMENDATION AND LEGISLATIVE
PROPOSAL X**



1 Sec. 2. Article 36 of Chapter 58 of the General Statutes is amended by
2 adding a new section to read:

3 **"§ 58-36-2. Private passenger motor vehicles; number of nonfleet policies.**

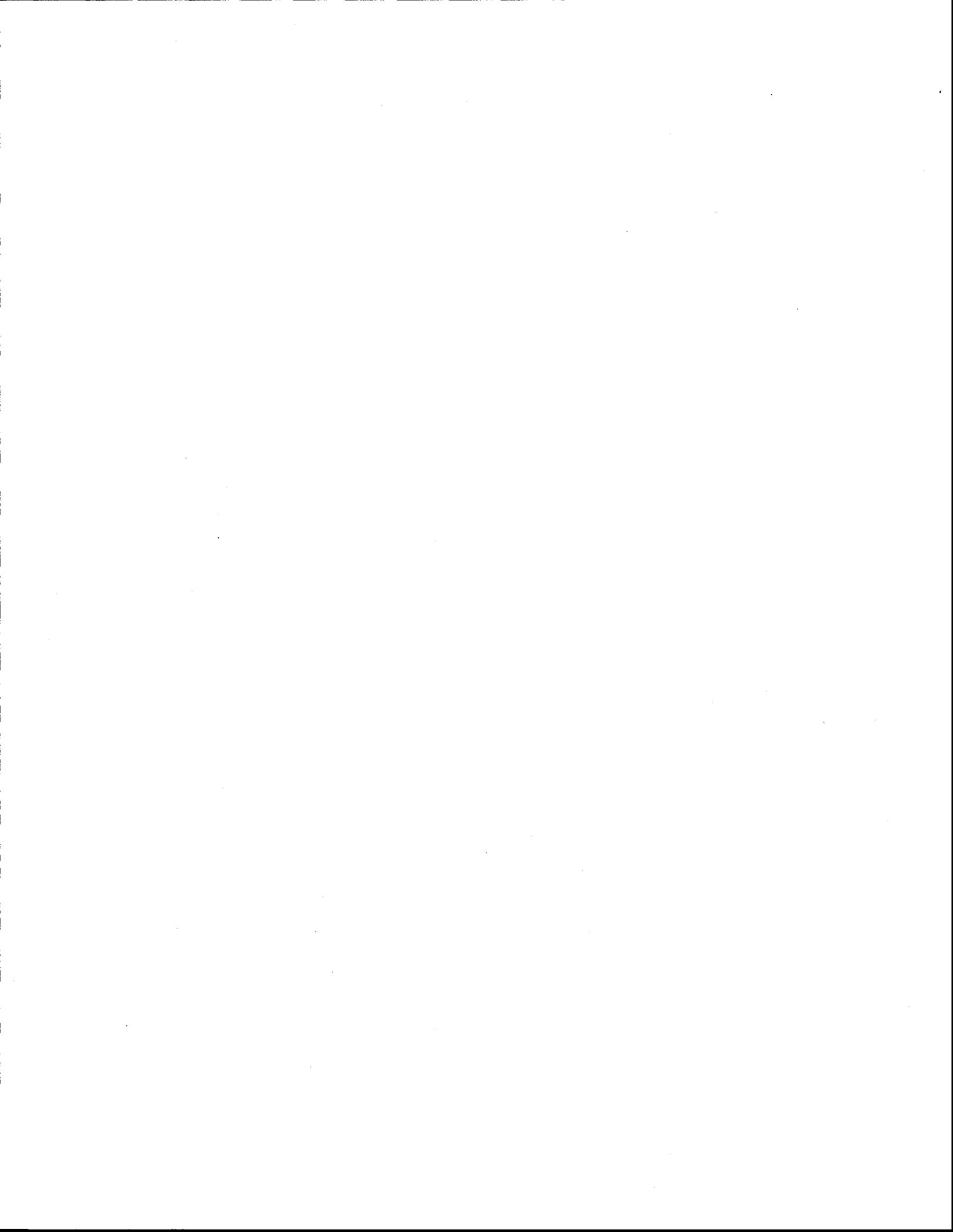
4 **Notwithstanding the definition of 'nonfleet' in G.S. 58-40- 10(2), the Bureau may**
5 **adopt rules, subject to the Commissioner's approval, that specify the circumstances**
6 **under which more than four private passenger motor vehicles may be covered under**
7 **a nonfleet private passenger motor vehicle policy that is subject to this Article."**

8 Sec. 3. This act becomes effective October 1, 1996, and applies to
9 policies issued or renewed on or after that date.

Revise the Definition of Nonfleet Private Passenger Motor Vehicles

FINDINGS: The Committee finds that the definition of “nonfleet” motor vehicle has caused some confusion in the industry with regard to how many private passenger motor vehicles may be covered under a nonfleet private passenger motor vehicle policy. The definition should be revised to clarify the number of automobiles that are allowed and to give the Rate Bureau authority to adopt rules that would allow flexibility for the number of automobiles that may be written under a private passenger motor vehicle policy.

RECOMMENDATION AND ANALYSIS OF LEGISLATIVE PROPOSAL X: Upon recommendation of the Committee, the bill short titled “Revise Definition of Nonfleet Motor Vehicle” amends G.S. 58-40-10(2), the definition of “nonfleet” motor vehicle, to provide that a nonfleet motor vehicle is a motor vehicle that is not eligible to be classified as a fleet vehicle because it is one of four or fewer vehicles under contract or owned by the insured. Section 2 of the bill adds a new section to Article 36 of Chapter 58 that gives the Rate Bureau the authority to adopt rules that specify special circumstances in which more than four vehicles may be covered under a nonfleet policy.



**RECOMMENDATION AND LEGISLATIVE
PROPOSAL XI**



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

S

D

SENATE DRS5675-LTZ139(3.21)

Short Title: Medicare Supplement Policies.

(Public)

Sponsors:

Referred to:

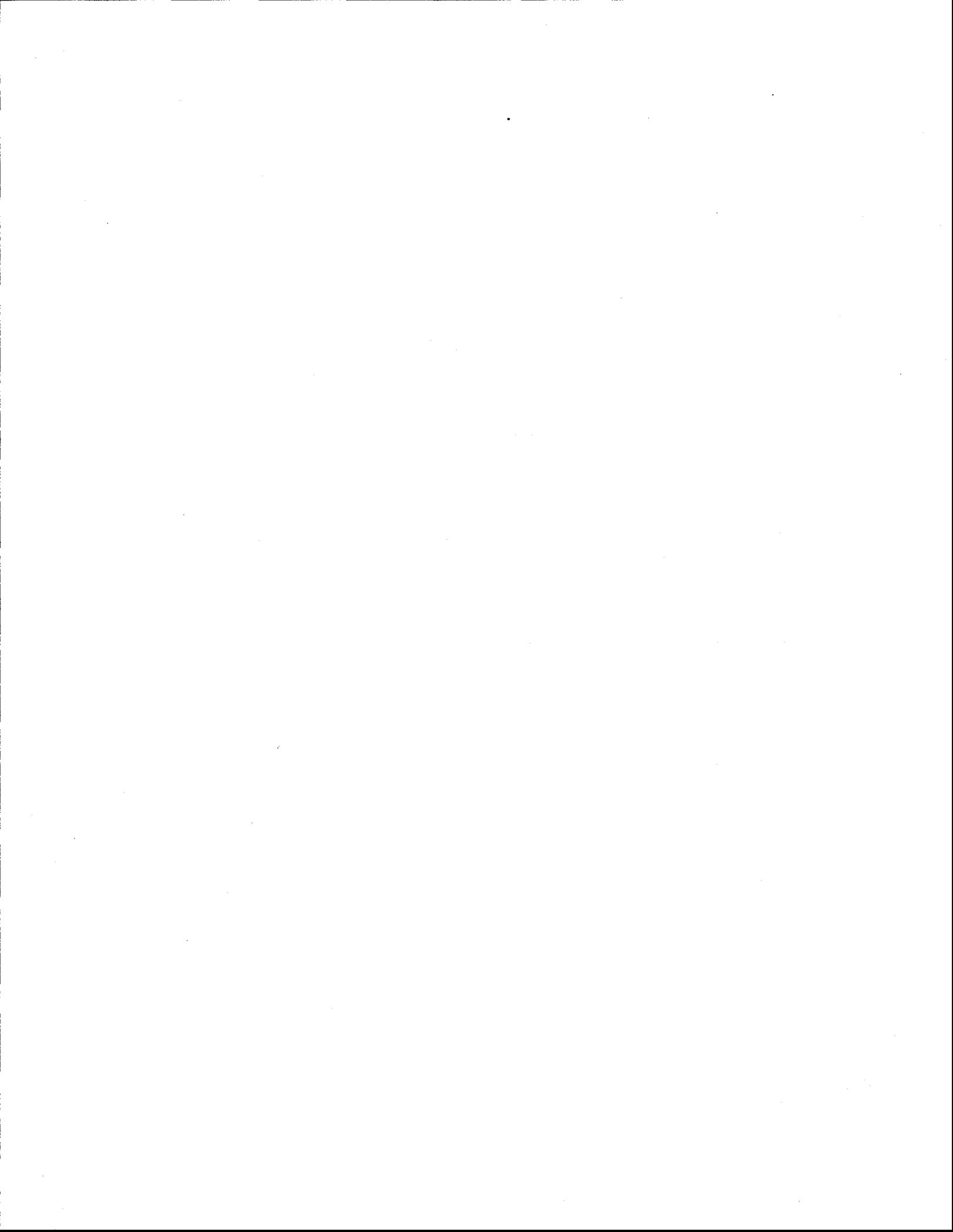
- 1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE MEDICARE SUPPLEMENT INSURANCE LAWS TO
3 COMPLY WITH THE FEDERAL SOCIAL SECURITY AMENDMENTS OF
4 1994 AS RECOMMENDED BY THE LEGISLATIVE RESEARCH
5 COMMISSION'S COMMITTEE ON INSURANCE AND INSURANCE-
6 RELATED ISSUES.
7 The General Assembly of North Carolina enacts:
8 Section 1. Article 54 of Chapter 58 of the General Statutes is amended
9 by adding a new section to read:
10 "§ 58-54-12. Rules for compliance with federal law and regulations.
11 The Commissioner may adopt rules necessary to conform Medicare supplement
12 policies and certificates to the requirements of federal law and regulations, including:
13 (1) Requiring refunds or credits if the policies or certificates do not
14 meet loss ratio requirements.
15 (2) Establishing a uniform methodology for calculating and reporting
16 loss ratios.
17 (3) Assuring public access to policies, premiums, and loss ratio
18 information of issuers of Medicare supplement insurance.
19 (4) Establishing a process for approving and disapproving policy forms
20 and certificate forms and proposed premium increases.
21 (5) Establishing procedures for holding public hearings before
22 approval of premium increases.
23 (6) Establishing standards for Medicare Select policies and
24 certificates."

1 Sec. 2. This act is effective upon ratification, and shall apply to Medicare
2 supplement policies issued or renewed on or after October 1, 1996.

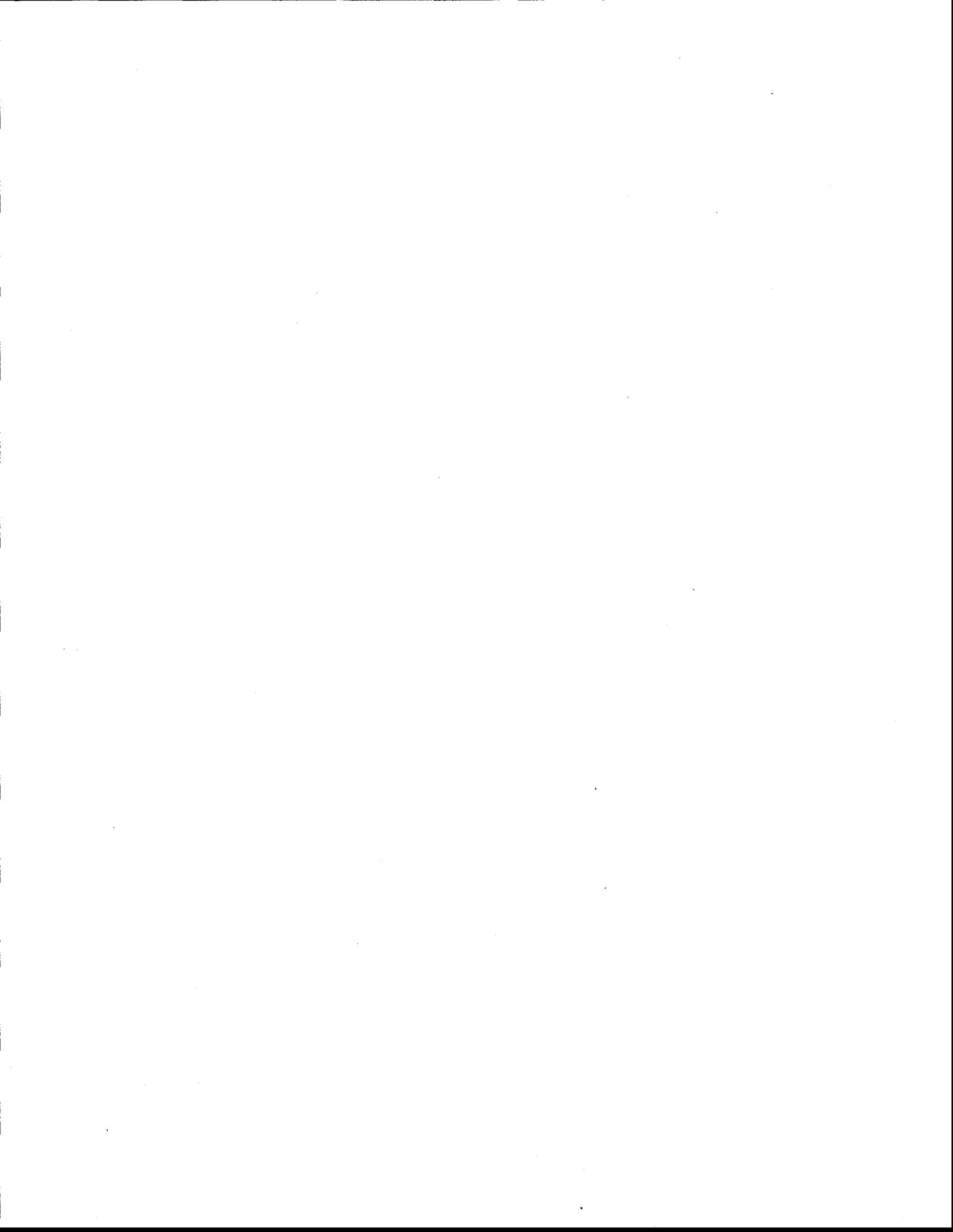
Conform Medicare Supplement Policies to the 1994 Social Security Act Amendments

FINDINGS: The Committee finds that Article 54 of Chapter 58, "Medicare Supplement Insurance Minimum Standards", should be revised to conform the law to the Social Security Act, as amended in 1994. The 1994 amendments provide more protection to buyers of Medicare supplement insurance policies and the National Association of Insurance Commissioners has adopted rules that revise the model act governing Medicare supplement insurance policies accordingly.

RECOMMENDATION AND ANALYSIS OF LEGISLATIVE PROPOSAL XI: The bill short titled "Medicare Supplement Policies" amends Article 54 of Chapter 58 by adding a new section to the Article that gives the Commissioner of Insurance the authority to adopt rules necessary to conform Medicare supplement policies and certificates to the requirements of federal law and regulations.



**RECOMMENDATION AND LEGISLATIVE
PROPOSAL XII**



1 disapprove any trust agreement filed under this sub-
2 subdivision that does not assure the safety of the premiums
3 collected. The investment income derived from the trust
4 may be allocated as the parties consider to be proper. The
5 person or affiliates shall deposit premiums collected into the
6 trust account within 15 business days after collection; or

7 b. The person or affiliates shall provide to the insurer, and the
8 insurer shall maintain in its possession, an unexpired, clean,
9 irrevocable letter of credit, payable to the insurer, issued for
10 a term of no less than one year and in conformity with the
11 requirements set forth in this sub-subdivision, the amount of
12 which equals or exceeds the liability of the person or
13 affiliates to the insurer, at all times during the period that
14 the letter of credit is in effect, for premiums collected by the
15 person or affiliates. The letter of credit shall be issued
16 under arrangements satisfactory to the Commissioner and
17 the letter shall be issued by a banking institution that is a
18 member of the Federal Reserve System and that has a
19 financial standing satisfactory to the Commissioner; or

20 c. The person or affiliates shall provide to the insurer, and the
21 insurer shall maintain in its possession, evidence that the
22 person or affiliates have purchased and have currently in
23 effect a financial guaranty bond, payable to the insurer,
24 issued for a term of not less than one year and that is in
25 conformity with the requirements set forth in this sub-
26 subdivision, the amount of which equals or exceeds the
27 liability of the person or affiliates to the insurer, at all times
28 during which the financial guaranty bond is in effect, for the
29 premiums collected by the person or persons. The financial
30 guaranty bond shall be issued under an arrangement
31 satisfactory to the Commissioner and the financial guaranty
32 bond shall be issued by an insurer that is authorized to
33 transact that business in this State, that has a financial
34 standing satisfactory to the Commissioner, and that is
35 neither controlled nor controlling in relation to either the
36 insurer or the person or affiliates for whom the bond is
37 purchased.

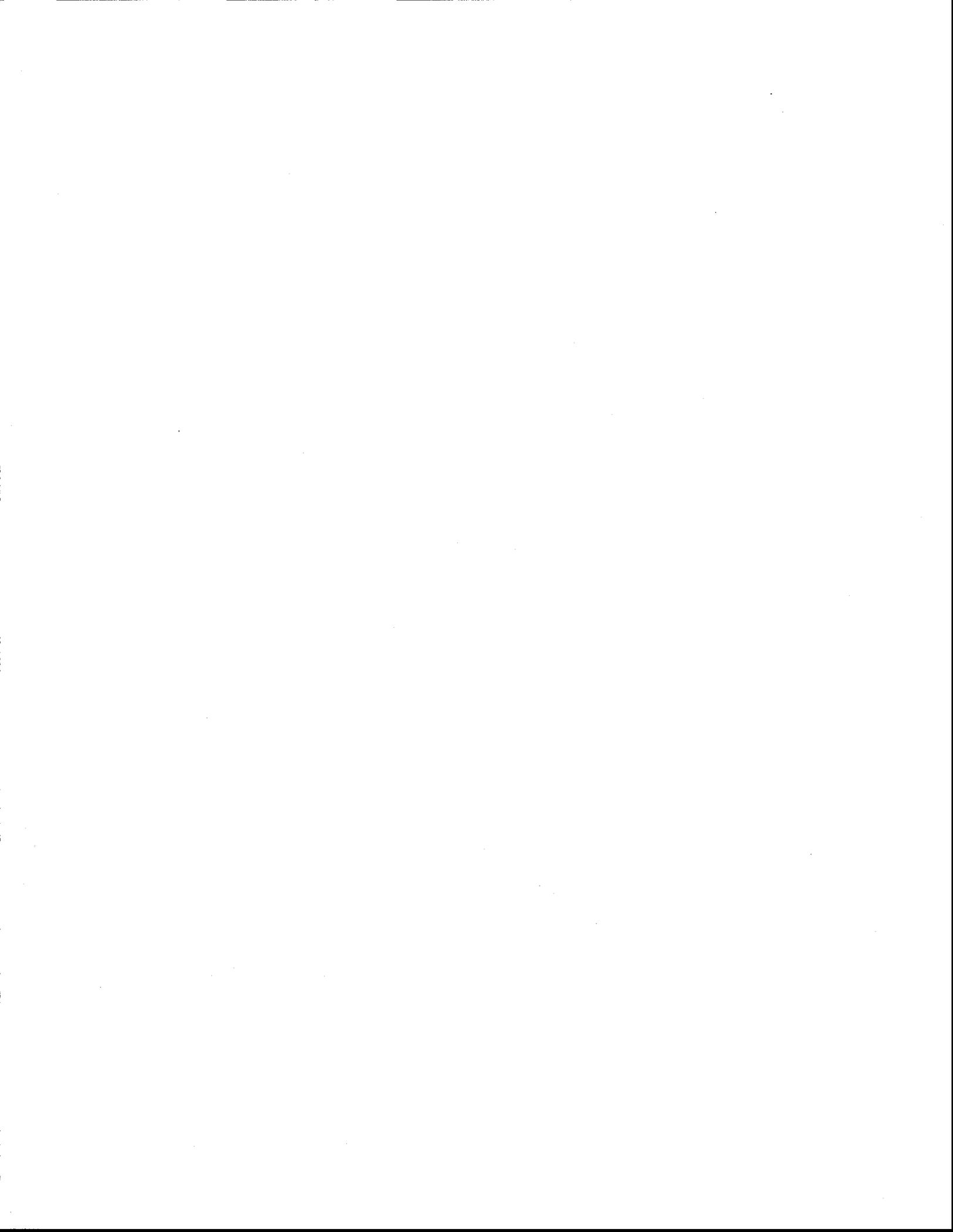
38 Premiums receivable under this subdivision will not be allowed as
39 an admitted asset if a financial evaluation by the Commissioner
40 indicates that the person or affiliates are unlikely to be able to pay
41 the premiums as they become due. The financial evaluation shall
42 be based on a review of the books and records of the controlling or
43 controlled person."

44 Sec. 2. This act becomes effective October 1, 1996.

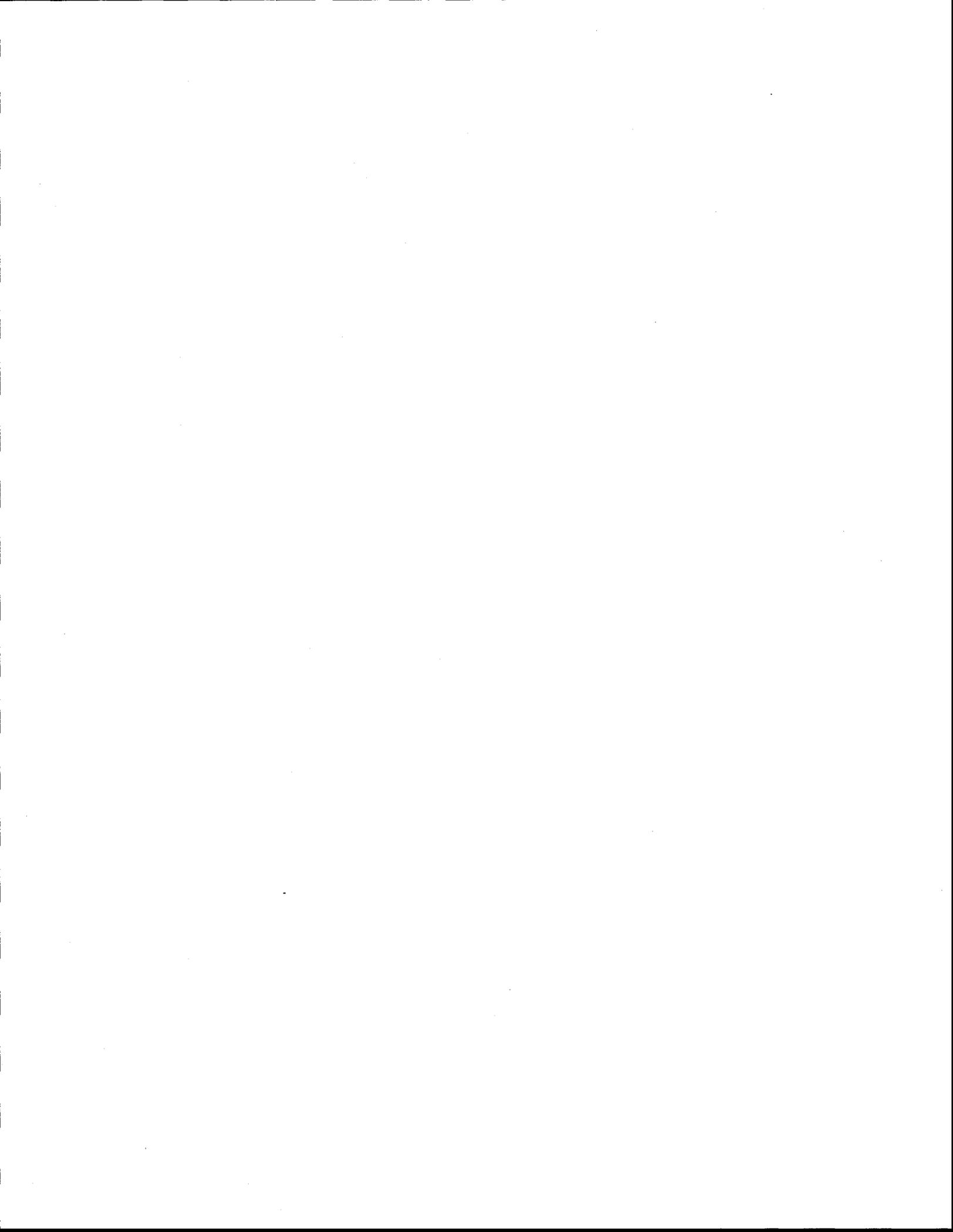
Insurance Company Investments

FINDINGS: G.S. 58-7-162(6) governs allowable or admitted assets of insurance companies and requires that, for all premiums that exceed 5% of the insurer's total premiums in the course of collection and not more than 90 days past due, agents must hold those premiums in a trust account, have a letter of credit issued to cover the amount, or obtain a financial guaranty bond. The Committee finds that this statutory requirement is burdensome to the industry and increases the administrative costs of the industry. Therefore, the insurance industry, and ultimately insurance policyholders as consumers, would benefit from a revision to the statute to ease the burden by requiring agents to set up trust accounts or to obtain letters of credit or guaranty bonds only if the amount of premiums collected "equals or exceeds five percent (5%) of the insurer's surplus as regards policyholders".

RECOMMENDATION AND ANALYSIS OF LEGISLATIVE PROPOSAL XII: Upon the recommendation of the Committee, the bill short titled "Insurance Company Investments" amends G.S. 58-7-162 to provide that, in determining the financial condition of an insurer, allowable assets include assets up to 5% of the surplus as regards policyholders, or the monetary surplus, before the premiums must be placed in a trust account or the agent must obtain a letter of credit or financial guaranty bond.



APPENDIX A



CHAPTER 542

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE AND CONTINUE VARIOUS COMMISSIONS, TO DIRECT STATE AGENCIES AND LEGISLATIVE OVERSIGHT COMMITTEES AND COMMISSIONS TO STUDY SPECIFIED ISSUES, TO MAKE VARIOUS STATUTORY CHANGES, AND TO MAKE TECHNICAL CORRECTIONS TO CHAPTER 507 OF THE 1995 SESSION LAWS.

The General Assembly of North Carolina enacts:

PART I.-----TITLE

Section 1. This act shall be known as "The Studies Act of 1995".

PART II.-----LEGISLATIVE RESEARCH COMMISSION

Sec. 2.1. The Legislative Research Commission may study the topics listed below. When applicable, the 1995 bill or resolution that originally proposed the issue or study and the name of the sponsor is listed. The Commission may consider the original bill or resolution in determining the nature, scope, and aspects of the study. The topics are:

...

- (13) Insurance and insurance-related issues:
- a. Coastal insurance availability and affordability (S.J.R. 881 - Soles, Parnell)
 - b. Long-term care insurance (S.B. 102 - Parnell; H.B. 98 - Edwards)
 - c. Statewide flexible benefits program and third-party administrator contracts (Executive Order 66)

...

Sec. 2.8. Committee Membership. For each Legislative Research Commission committee created during the 1995-96 biennium, the cochairs of the Legislative Research Commission shall appoint the committee membership.

Sec. 2.9. Reporting Dates. For each of the topics the Legislative Research Commission decides to study under this act or pursuant to G.S. 120-30.17(1), the Commission may report its findings, together with any recommended legislation, to the 1996 Regular Session of the 1995 General Assembly, if approved by the cochairs, or the 1997 General Assembly, or both.

Sec. 2.10. Bills and Resolution References. The listing of the original bill or resolution in this Part is for reference purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

Sec. 2.11. Funding. From the funds available to the General Assembly, the Legislative Services Commission may allocate additional monies to fund the work of the Legislative Research Commission....

...

PART XXVI.-----EFFECTIVE DATE

Sec. 26.1. This act is effective upon ratification.

GENERAL ASSEMBLY OF NORTH CAROLINA PRINCIPAL CLERK

SESSION 1995

S

D

SENATE JOINT RESOLUTION DRSJR4603-RN031(4.24)

Sponsors: Senators Soles and Parnell.

Referred to:

1 A JOINT RESOLUTION AUTHORIZING THE LEGISLATIVE RESEARCH
2 COMMISSION TO STUDY THE AVAILABILITY AND AFFORDABILITY OF
3 COASTAL INSURANCE.

4 Whereas, the coastal areas of North Carolina are experiencing problems
5 with the availability and affordability of property, liability, and other essential
6 insurance coverages; and

7 Whereas, these problems should be addressed as soon as possible after
8 deliberation and study and after input by insurers, policyholders, agents,
9 businessowners, homeowners, and other affected parties;

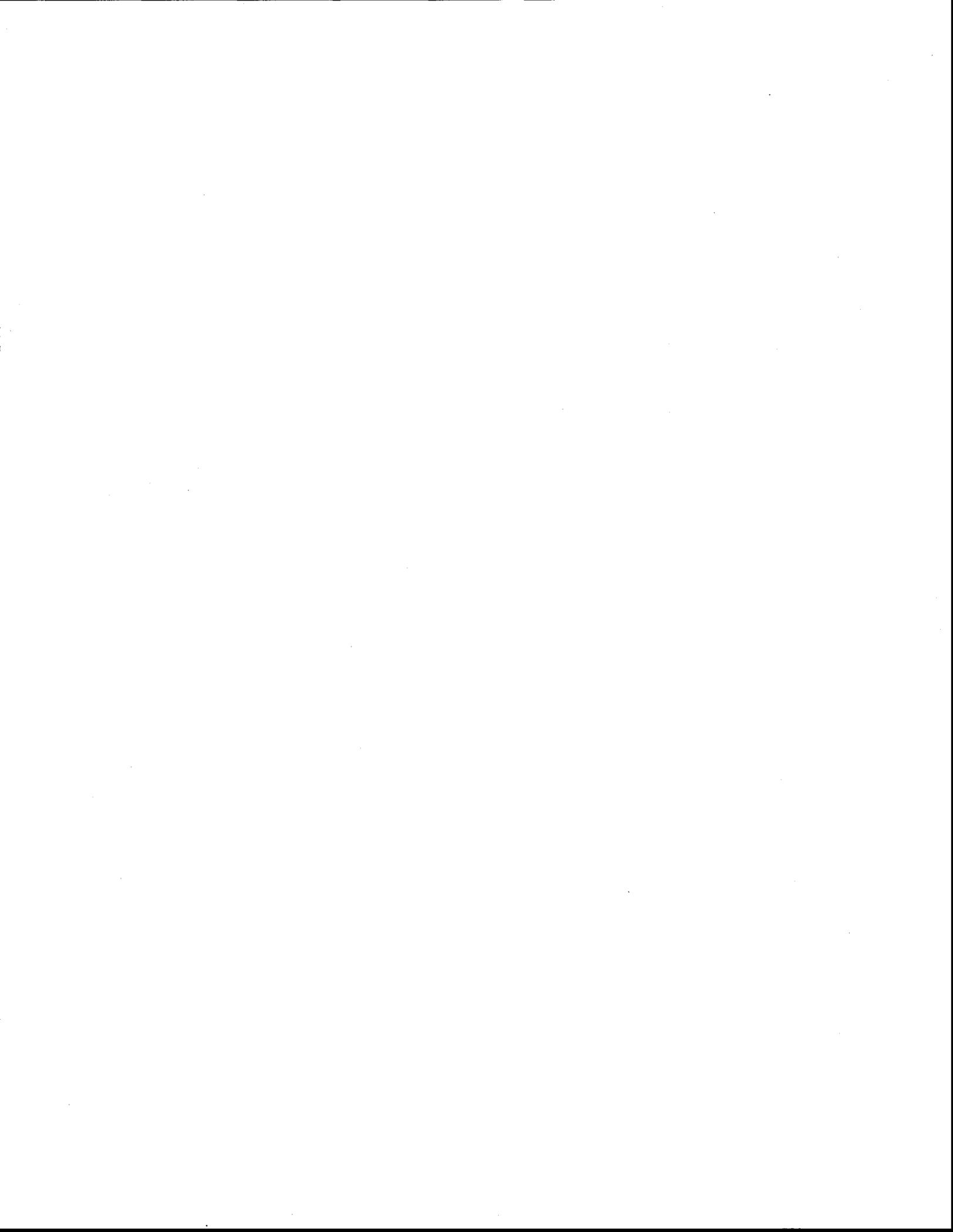
10 Now, therefore, be it resolved by the Senate, the House of Representatives
11 concurring:

12 Section 1. The Legislative Research Commission may study the problems
13 of insurance availability and affordability in coastal and Eastern North Carolina. The
14 Commission may also study the operation of the Beach and FAIR plans and other
15 matters relating to insurance availability and affordability.

16 Sec. 2. The Commission may make an interim or final report, including
17 any legislative proposals, to the 1995 General Assembly, Regular Session 1996. If no
18 final report is made to the 1995 General Assembly, Regular Session 1996, the
19 Commission may make a final report, including any legislative proposals, to the 1997
20 General Assembly.

21 Sec. 3. This resolution is effective upon ratification.

APPENDIX B



**Insurance Issues Committee
Membership
1995 - 1996**

LRC Member: Rep. Jerry C. Dockham
P. O. Box 265
Denton, NC 27239
(704) 869-3804

President Pro Tempore Appointments

Sen. R. C. Soles, Jr., Co-Chair
P. O. Box 6
Tabor City, NC 28463
(910) 653-2015

Sen. C. R. Edwards
1502 Boros Drive
Fayetteville, NC 28303
(910) 488-9358

Ms. Marcia Fearing
P. O. Box 712
Nags Head, NC 27959

Ms. Mollie Fearing
415 Agona Street
Manteo, NC 27954

Mr. John Gainey
P. O. Drawer 2000
Morehead City, NC 28557

Mr. Jerry Harris
111 South Caswell Street
LaGrange, NC 28551

Mr. William Z. Smith
P. O. Box 874
Gastonia, NC 28053

Speaker's Appointments

Rep. John A. Cocklereece
612 Pasteur Dr. , S
Greensboro, NC 27403
(910) 294-2065

Mr. Steve George
1319 Hillshire Meadows Dr.
Matthews, NC 28105

Mr. John R. Hicks
P. O. Box 1678
Wilmington, NC 28402

Rep. John W. Hurley
P. O. Box 714
Fayetteville, NC 28302
(910) 483-6210

Rep. William E. McMahan
5815 Westpark Drive
Charlotte, NC 28211
(704) 561-3402

Mr. Elmer Midgett, Jr.
P. O. Box 85
Manteo, NC 27954

Rep. David M. Miner
108 Lakewater Drive
Cary, NC 27511
(919) 460-7757

Mr. Durant G. Vick, CPCU ARM
P. O. Box 3988
Wilmington, NC 28406

Rep. Michael S. Wilkins
P. O. Box 843
Roxboro, NC 27574
(910) 234-7374

Staff:

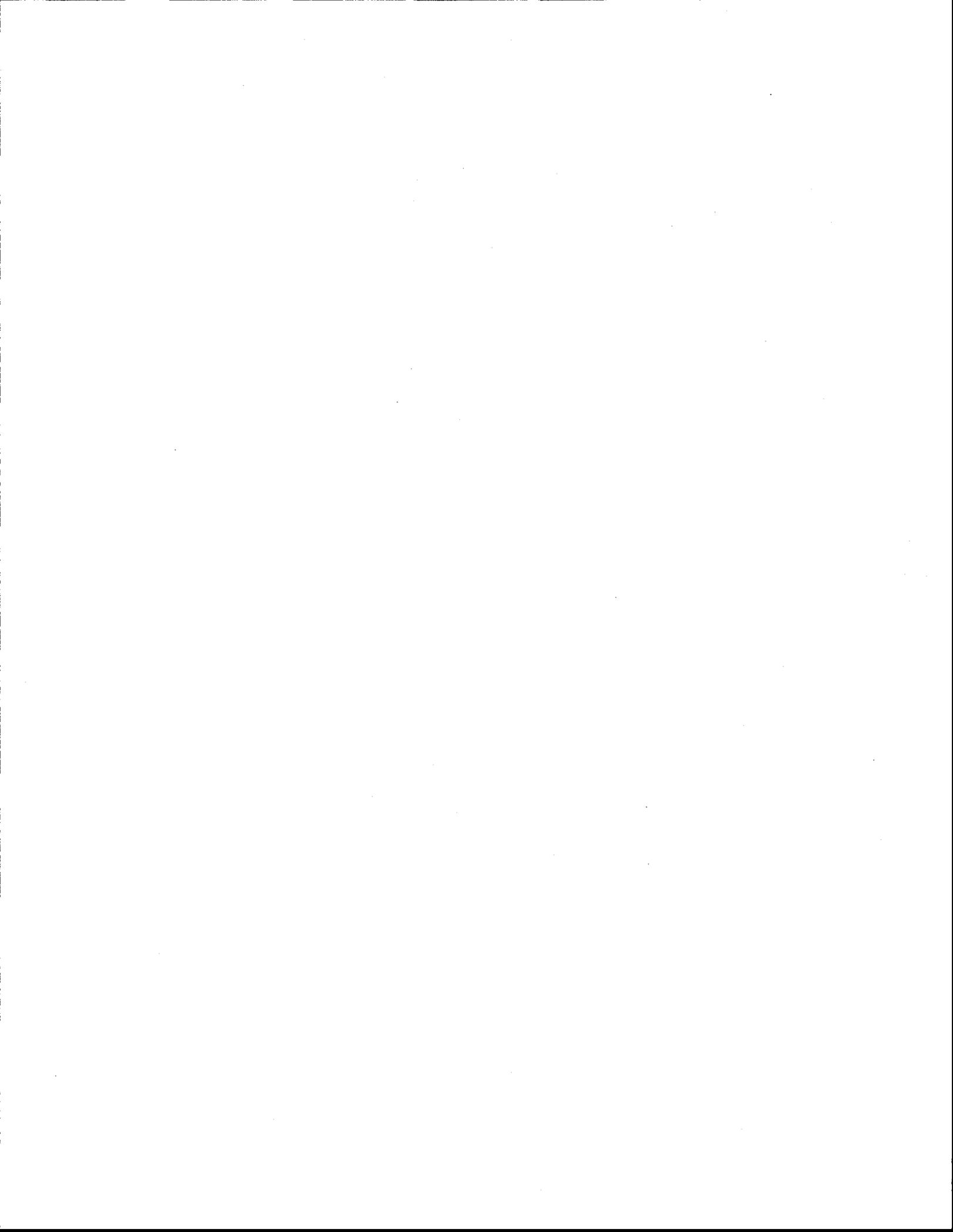
Ms. Beth Barnes
Bill Drafting Division
(919) 733-6660

Mr. Linwood Jones
Ms. Lynn Marshbanks
Research Division
(919) 733-2578

Clerk:

Susan Phillips
418-B LOB
(919) 715-3011

APPENDIX C



LRC/Insurance Issues Committee
Interested Parties List

Mr. Alan Miles
Bailey & Dixon
P. O. Box 1351
Raleigh, NC 27602

Ms. Christy Reeves
115 ½ W. Morgan Street
Raleigh, NC 27601

Mr. Glenn Jernigan
P. O. Box 1863
Fayetteville, NC 28302

Mr. Mack Paul
Smith Anderson
P. O. Box 2611
Raleigh, NC 27602

Mr. Fletcher Willey
P. O. Box 848
Nags Head, NC 27954

Mr. John Bone
P. O. Box 90
Kitty Hawk, NC 27949

Ms. Susan B. Valauri
4401 Creedmoor Road
Raleigh, NC 27612

Mr. Robert Paschal
P. O. Box 31627
Raleigh, NC 27622

Mr. Randolph E. Cloud
11 Glenwood Ave. Suite A
Raleigh, NC 27603

Mr. John B. McMillan
P. O. Box 20389
Raleigh, NC 27610

Mr. F. Eugene Hafer
CAPIA
P. O. Box 30518
Raleigh, NC 27622

Ms. Elizabeth O. Proietti
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Raleigh, NC 27602

Farah Boyce
Wilmington Chamber of Commerce
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Wilmington, NC 28401

Mr. Dane Lackard
NCJUA
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Raleigh, NC 27605

Mr. Alvin Ashworth
NCJUA
1700 Hillsborough Street
Raleigh, NC 27605

Mr. Bob Bird
IIANC
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Raleigh, NC 27605

Ms. Carolyn I. Lyons
Woodbury & Co.
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Wilmington, NC 28402

Mr. Robert Wells
Southern Insurance Agency
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Kitty Hawk, NC 27949

Mr. Dascheil Propes
NC Department of Insurance
Dobbs Building
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Raleigh, NC 27603

Mr. Dave Diehl
NC Department of Insurance
430 N. Salisbury Street
Raleigh, NC 27603

Mr. Bill Hale
NC Department of Insurance
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Ms. Beckie Street
PPAB
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Ms. Mary Anne Hocutt
DHR-Personnel
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Mr. Bill Trott
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Ms. Sean Flannery
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Ms. Polly Williams
NC Coalition of Aging
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Mr. Dewey Meshaw
NCJUA
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Raleigh, NC 27605

Mr. Robert A. Henderson
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Suite 849 Barnett Bank Building
Tallahassee, FL 32301

Mr. George M. Teague
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Raleigh, NC 27611

Mr. B. Davis Horne, Jr.
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Mr. Tommy Sutton
108 W. Gordon Street
Kinston, NC 28501

Mr. Terry Pemberton
State Farm Insurance
1500 State Farm Blvd.
Charlottesville, VA 22909

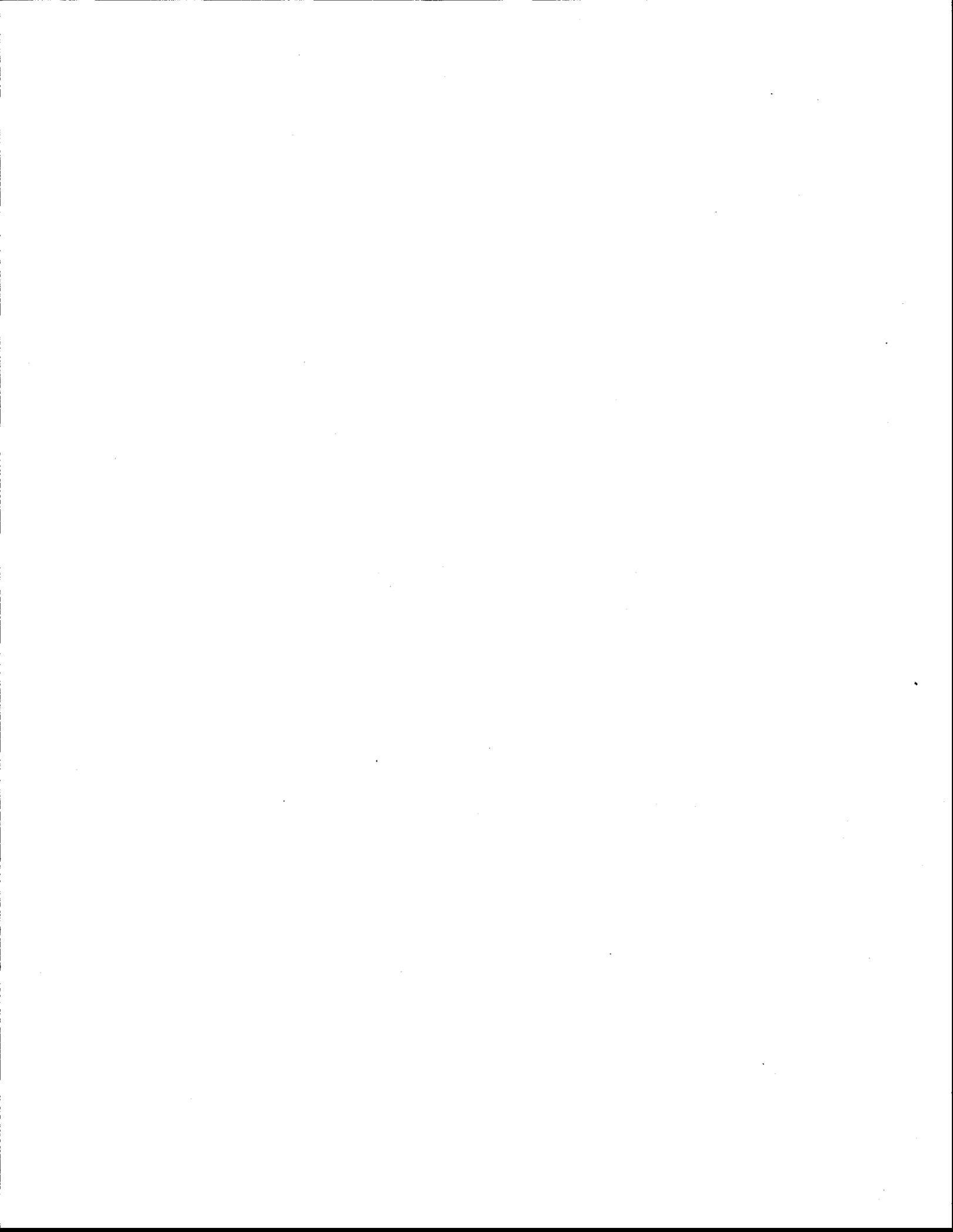
Mr. Art Ivey
110 Gleneagles Rd.
Campobello, SC 29322

Ms. Marge Foreman
NCAE
P. O. Box 27347
Raleigh, NC 27611

Ms. Tina Meehan
PHP
113 Edinburgh South
Cary, NC 27511

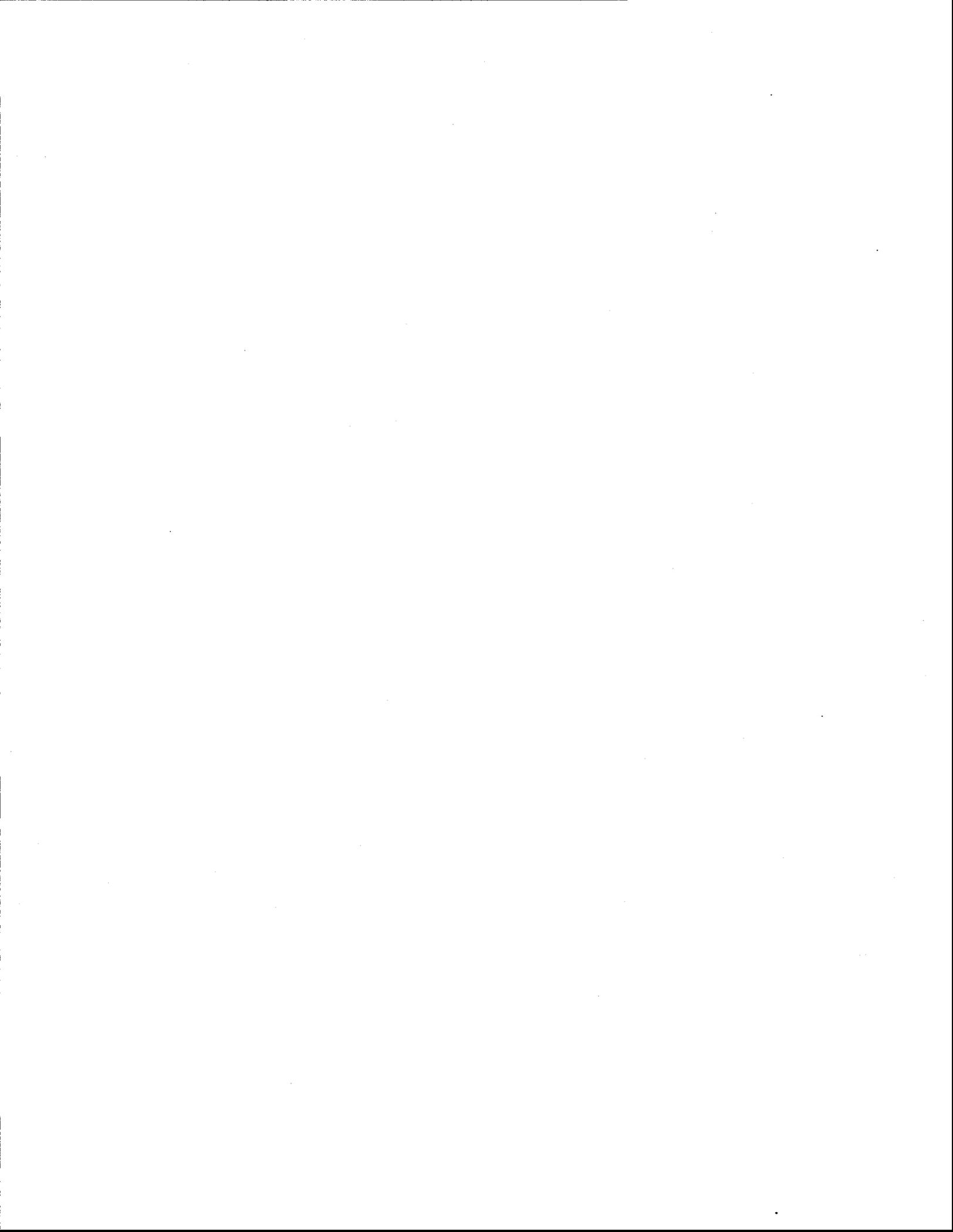
Ms. Brenda Franco
Smith Anderson
P. O. Box 2611
Raleigh, NC 27602

APPENDIX D

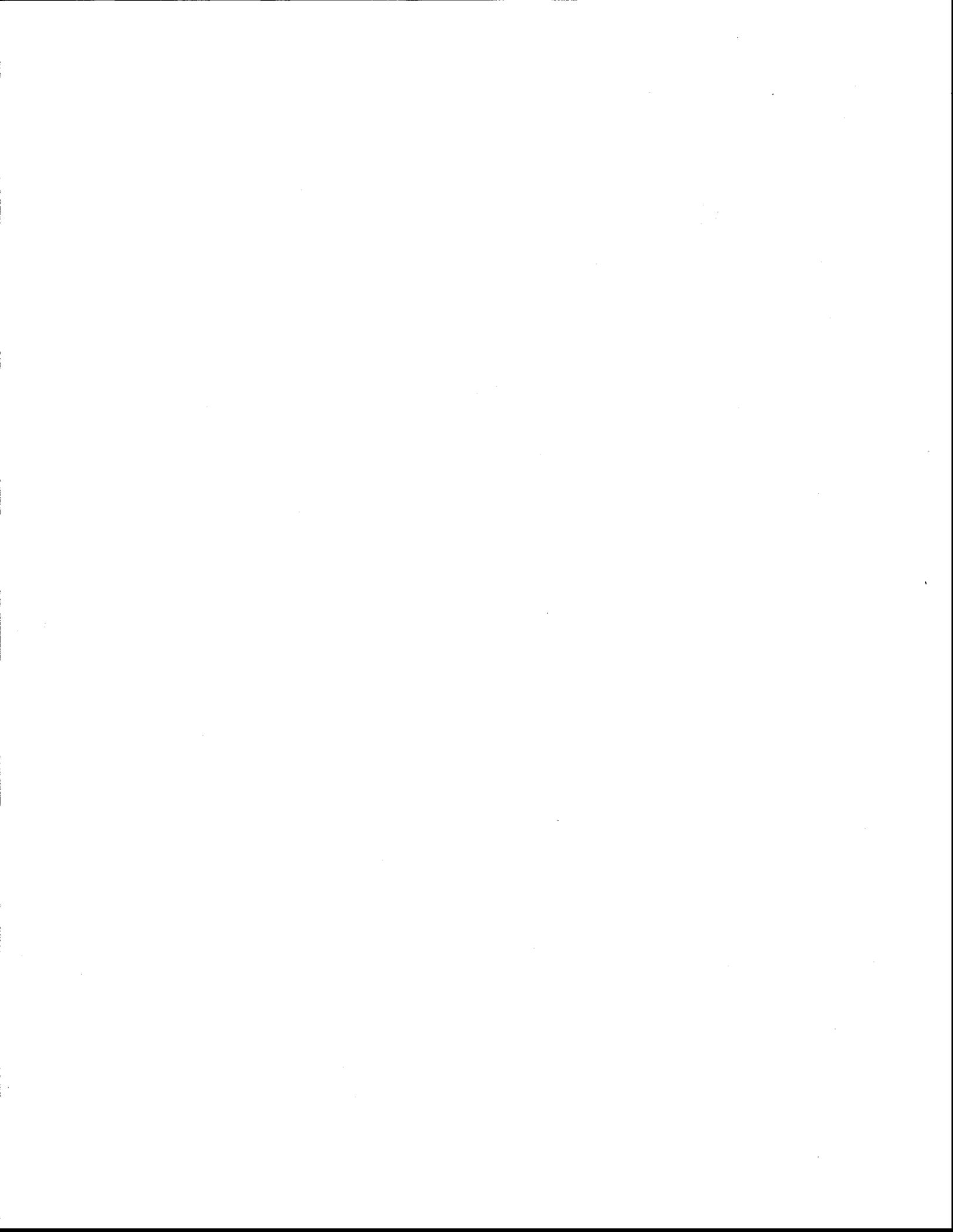


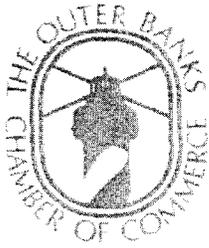
**NORTH CAROLINA INSURANCE UNDERWRITING ASSOCIATION
INCOME COMPARISON FOR FISCAL YEARS 1970 - 1995**

AS OF SEPTEMBER 30,	NET INCOME (LOSS)	ASSESSMENTS (DISTRIBUTIONS)	CHANGE IN NON - ADMITTED ASSETS ACCRUED INTEREST	MEMBERS' EQUITY (DEFICIT)
1970	\$ (56,816)	\$ 55,423	\$ -	\$ (1,393)
1971	\$ 58,472	\$ 74	\$ -	\$ 57,153
1972	\$ 298,952	\$ -	\$ -	\$ 356,105
1973	\$ 544,509	\$ (363,791)	\$ -	\$ 536,823
1974	\$ 762,967	\$ -	\$ -	\$ 1,299,790
1975	\$ 761,981	\$ -	\$ -	\$ 2,061,771
1976	\$ 618,996	\$ (464,981)	\$ -	\$ 2,215,786
1977	\$ 859,168	\$ -	\$ (592)	\$ 3,074,362
1978	\$ 871,700	\$ (674,832)	\$ 96	\$ 3,271,326
1979	\$ 1,550,647	\$ -	\$ 205	\$ 4,822,178
1980	\$ 2,056,728	\$ (1,328,368)	\$ (7,656)	\$ 5,542,882
1981	\$ 3,101,399	\$ (819,496)	\$ 175,781	\$ 8,000,566
1982	\$ 3,371,272	\$ (897,549)	\$ 78,579	\$ 10,552,868
1983	\$ 3,217,862	\$ (1,083,986)	\$ (110,852)	\$ 12,575,892
1984	\$ (1,955,437)	\$ (1,810,875)	\$ 65,186	\$ 8,874,766
1985	\$ 3,291,632	\$ (2,412,579)	\$ (185,718)	\$ 9,568,101
1986	\$ 6,615,155	\$ (2,901,304)	\$ (8,185)	\$ 13,273,767
1987	\$ 10,172,762	\$ (3,351,697)	\$ (4,664)	\$ 20,090,168
1988	\$ 11,090,480	\$ (16,828,114)	\$ 15,930	\$ 14,368,464
1989	\$ 7,858,204	\$ (10,509,954)	\$ 19,963	\$ 11,736,677
1990	\$ 8,293,278	\$ (10,278,722)	\$ (16,394)	\$ 9,734,839
1991	\$ 10,327,974	\$ (6,021,452)	\$ (6,670)	\$ 14,034,691
1992	\$ 11,322,104	\$ (7,496,291)	\$ (2,266)	\$ 17,858,238
1993	\$ (4,862,351)	\$ (9,132,226)	\$ (89,747)	\$ 3,773,914
1994	\$ 10,952,532	\$ (5,941,583)	\$ (38,811)	\$ 8,746,052
1995	\$ 17,107,404	\$ (3,241,019)	\$ 14,042	\$ 22,626,479
	\$ 108,231,574	\$ (85,503,322)	\$ (101,773)	\$ 22,626,479
TOTAL NET ASSESSMENTS		\$ 55,497		
TOTAL NET DISTRIBUTIONS		\$ (85,558,819)		
		<u>\$ (85,503,322)</u>		



APPENDIX E





THE OUTER BANKS CHAMBER OF COMMERCE

Serving Currituck and Dare Counties, Ocracoke Island

POINTS OF RECOMMENDATION FOR LEGISLATIVE RESEARCH COMMISSION

LOCATED ON THE CORNER OF

OCEAN BAY BLVD. &

MUSTIAN STREET,

KILL DEVIL HILLS

P.O. BOX 1757

KILL DEVIL HILLS, NC 27948

VOICE (919) 441-8144

FAX (919) 441-0338

E-MAIL ADDRESS:

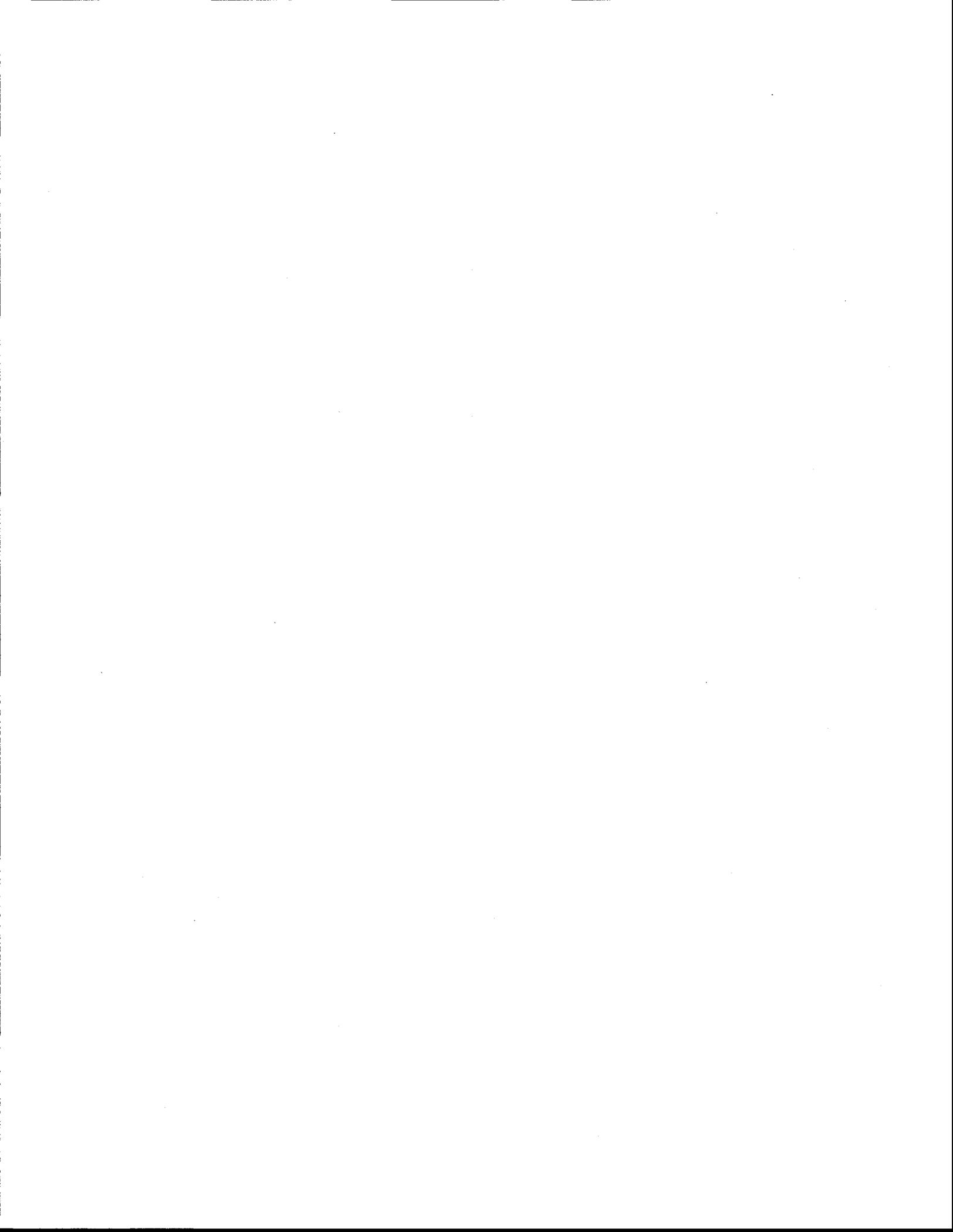
obcc@mail.interpath.net

FIND OUR HOMEPAGE

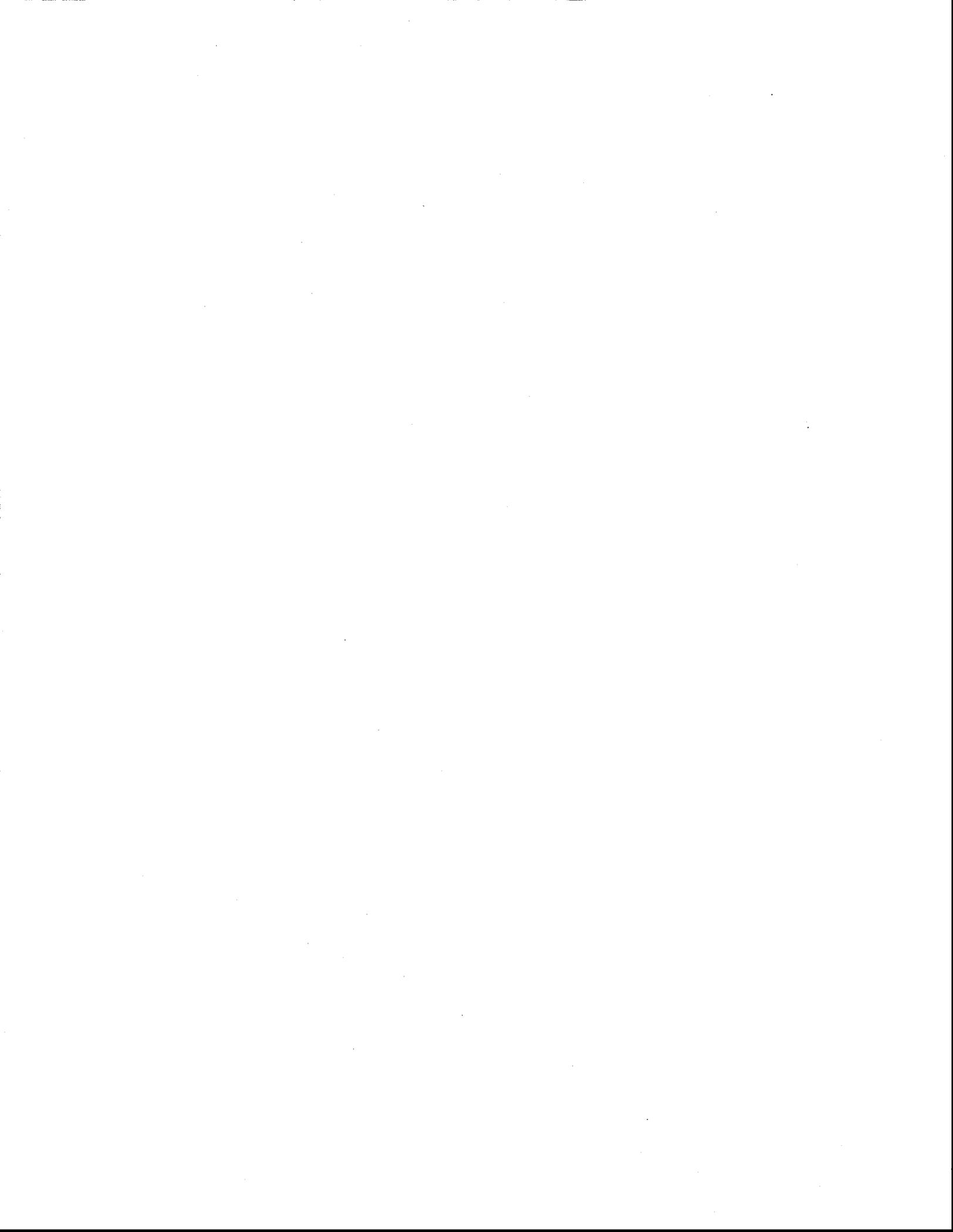
ON THE INTERNET AT

<http://www.outer-banks.com>

1. **Legislation to make available through the N.C.I.U.A. business income and loss of rental income coverage for Commercial Lines policies, on a limited amount basis.**
2. **Legislation to make law and ordinance coverage available through the N.C.I.U.A.**
3. **Requiring the N.C.I.U.A. to retain a portion of its profits as a reserve fund against future company assessments that would cause rate increases and company withdrawal from North Carolina.**
4. **Setting the rates for windstorm policies through the Beach Plan to insure equity between the credit given for the windstorm exclusion and the cost to repurchase windstorm coverage. (Applicable to Homeowners & Commercial Package policies.)**
5. **A revised formula for company participation in N.C.I.U.A. profits and losses that would provide a greater incentive for companies to write voluntary business.**



APPENDIX F



TESTIMONY OF
CHRISTOPHER ROE
COUNSEL
Before The
INSURANCE ISSUES STUDY COMMITTEE
On
COASTAL INSURANCE AVAILABILITY

Raleigh, NC
February 15, 1996

Mr. Chairman and Committee members:

My name is Chris Roe. I am counsel to the American Insurance Association. AIA represents major property and casualty insurance companies across the United States which write more than 30% of the property insurance in North Carolina. We appreciate your invitation to testify today on the problems some North Carolina residents have experienced with property insurance, particularly homeowners residing in coastal communities. We commend you for holding this meeting and affording us an opportunity to share our perspective of homeowners insurance for coastal areas -- an issue that has both local and national implications.

Identifying the Problem

Catastrophes have been described by A.M. Best as "insurers' number one financial challenge," and is a top priority for AIA. Whether the issue is phrased in terms of an \$80 billion hurricane or a "sudden knockout punch," the problem is enormous. The industry probably has enough capacity to handle one event about the size of Hurricane Andrew, or maybe a little larger. Because insurers are concerned about the "knockout punch," they have begun utilizing state-of-the-art computer models which indicate that the gap between exposure and capacity is severe.

At the same time insurers have discovered that they have been underestimating possible catastrophe losses, North Carolina has experienced huge increases in coastal population and coastal property exposure. Between 1980-1993, the coastal population increased by 25% and property exposure increased by 241% totaling \$45 billion. Using catastrophe computer modeling performed for the Natural

Disaster Coalition (NDC) by RMS/ISO, the NDC estimates that the 100 year hurricane hitting the Southeast would cause \$6.2 billion in losses. This scenario is not the worse. Losses could be significantly higher. For example, the 500 year storm (a .2% probability) would result in losses of \$16.5 billion. Insurers are greatly concerned about the mega-catastrophe and have begun adjusting their coastal business.

Three Major Principles

I understand that the Committee is reviewing multiple suggestions for addressing coastal insurance availability and is interested in how other states like Florida and Texas have handled the issue. In particular, I understand the Committee is concerned about the growth of the Beach Plan. Before responding, it is important to articulate three major principles which we believe are essential for determining the impact of these suggestion or weighing the impact of proposals from other states:

- Does the proposal maximize present capacity in the industry?
- Does the proposal allow insurers to manage their windstorm exposure?
- Does the proposal provide for adequate rates?

Some of the "solutions" that have been offered around the country would exacerbate, not alleviate, current conditions. Other reforms have demonstrated that solutions can be crafted. For example, even though Florida implemented a moratorium after Hurricane Andrew on cancellations and nonrenewals on residential property insurance, their recent reforms compare favorably to these three principles and have produced some immediate results. Similarly, Texas has followed an approach which also compares favorably.

If the proposal does not affirmatively answer one of these principles, the proposal is likely to have little impact or create a disincentive for insurers. After discussing other state reforms, I would like to respond to some of the proposals before the Committee.

Florida

Florida's recent reforms accomplished three major goals: maximized capacity, permitted catastrophe computer modeling in ratemaking, and removed the disincentive of residual market assessments. To maximize capacity, Florida has adopted windstorm deductibles as high as 5% with a 10% co-payment. They are now exploring a 10% deductible which California has already adopted for the peril of

earthquakes. A spread of deductibles provides consumers with a progressive means of handling the amount of the deductible. Rather than a flat deductible for all consumers, those consumers with higher coverage limits can assume more exposure with a percentage deductible. On May 1, Florida's windstorm pool will have a minimum 1% deductible on the value of the dwelling for residential which can't drop below \$500 and an optional 2% deductible. Commercial property will have a 3% deductible which cannot drop below \$1000.

Florida's windpool is called the Florida Windstorm Underwriting Association (FWUA) and the joint underwriting association is known as the Florida Residential JUA. Both residual markets are intended to write exclusively in their geographical areas. The Florida Residential JUA has over 800,000 risks and is the second largest insurer in the state with more than 20% of the homeowners market. The Florida windpool has also exploded in growth and has accumulated over \$30 billion in windstorm exposure.

As these two residual markets grew, their increased exposure substantially contributed to a dysfunctional market. In the past, insurers were entirely responsible for residual market deficits which were passed onto insurers through assessments. North Carolina has a similar assessment. These assessments are like a tax and insurers soon realized that a company's assessments could exceed its own losses from a storm. As a result, residual markets forced insurers to take on more windstorm exposure than they could individually handle. Regardless of whether they undertook appropriate underwriting and properly distributed their risk, insurers were unable to control their windstorm exposure.

These residual market liabilities also produced a major disincentive for insurers to increase writings. Like North Carolina, assessments are based upon an insurer's market share. An insurer with 10% of the market was responsible for 10% of any deficit. Thus, if an insurer decided to write more business, it assumed a greater amount of the liabilities of the residual markets. Once the residual markets grew substantially, it created a major disincentive for insurers to write more business. In fact, for individual insurers to maintain the same level of windstorm exposure, insurers had to adjust their own portfolio.

Florida took several steps to address these problems which are summarized as follows:

- Windpool - The industry remains responsible for windpool deficits, but insurers are able to pass assessments onto policyholders. In addition, the state could issue bonds to allow insurers to pay off the deficit over a period of time. The FWUA also has a take out/keep out program which allows insurers to write themselves completely out of the FWUA. This

means that insurers are given incentives to write business and in return they are excused from future assessments.

- Residential JUA - The industry's annual responsibility for JUA liabilities is capped at 10% of the written premiums for the subject lines in the state which sets the cap at \$167 million. A statewide surcharge on policyholders covers the rest. In addition, the industry's assessments can be passed onto policyholders.
- Hurricane Catastrophe Fund - The state created a rainy-day fund which annually assesses insurers on their residential property business and reimburses insurers after a major hurricane. These assessments can be passed through to policyholders. For funds to accumulate free of federal taxation, which is the main benefit of the Fund, the state had to contribute \$50 million to the Fund.
- Rates - Florida realized that rates were inadequate and permitted insurers to use catastrophe computer modeling. Inadequate rates created a disincentive for new business. In addition, the rates in the Residential JUA remained below the voluntary market. As a result, policyholders were cancelling coverage and moving to the JUA. The recent Florida reforms provide that the JUA rates must be above the voluntary market.
- Depopulation Program - To decrease the size of the Residential JUA, Florida adopted a number of incentives. First, for every risk an insurer takes out of the Residential JUA, the insurer receives \$100. Second, these risks do not count towards an insurer's market share for three years for purposes of residual market assessments. These incentives proved attractive as evident by Commissioner Nelson's announcement in February that he had received proposals to remove 1.1 million risks from the Residential JUA.

Texas

Texas has also taken some similar approaches. First, Texas has approved voluntary windstorm deductibles ranging from 1% - 5%. These deductible levels will also apply to the Texas windpool called the Catpool.

Second, the state has explored expansion of the Catpool and has been very reluctant to expand it. At this time, the state has decided to expand the Catpool to only two towns. Expansion is seen as a last step if all other approaches fail.

Third, the Catpool established a reserve fund. After the Catpool pays each year's claims and operating expenses, remaining amounts are deposited into a Trust Fund held by the state. As these funds accumulate, it provides a cushion by expanding the capacity of the Catpool to handle a major hurricane. Insurers must be assessed \$100 million before the Fund is triggered. For losses between \$200 and \$400 million, insurers are assessed and may take a tax credit over 5 years equal to the assessment in this layer.

Finally, the Catpool has a take out/keep out credit program and will hold hearings in March on whether to expand the program so that insurers can completely write themselves out.

AIA's Proposals for Addressing Market Availability

We have learned some valuable lessons in Florida. When applying these lessons to the various proposals before the Committee, we would like to reiterate the following observation: increasing the growth of the industry's liability for residual market deficits creates a major disincentive for insurers and prevents insurers from managing their windstorm exposure. There are several proposals which create this disincentive and will exacerbate the situation:

- increasing the geographical area of the beach plan;
- requiring the beach plan to offer homeowners' coverage;
- requiring the beach plan to write indirect loss coverage on wind and hail policies; and
- requiring the beach plan to offer indirect loss coverage on regular commercial and dwelling policies.

Before pursuing these proposals, the state should first explore other measures that maximize capacity and provide for adequate rates. The danger of pursuing these proposals is that they may perpetuate the cycle of residual market growth.

AIA is greatly concerned about any proposals to assign risks to insurers. Many insurers write niches and lack experience with particular risks. For example, an insurer may write only mobile homes or expensive properties. Inexperience with a niche will result in worse underwriting experience which is likely to translate into higher rates. More importantly, assigning risks prevent insurers from managing their windstorm exposure. If insurers cannot manage their exposure, it is likely to create a problem similar to Florida.

In the alternative, there are several proposals before the Committee which create incentives and would likely have a positive impact as demonstrated in Florida:

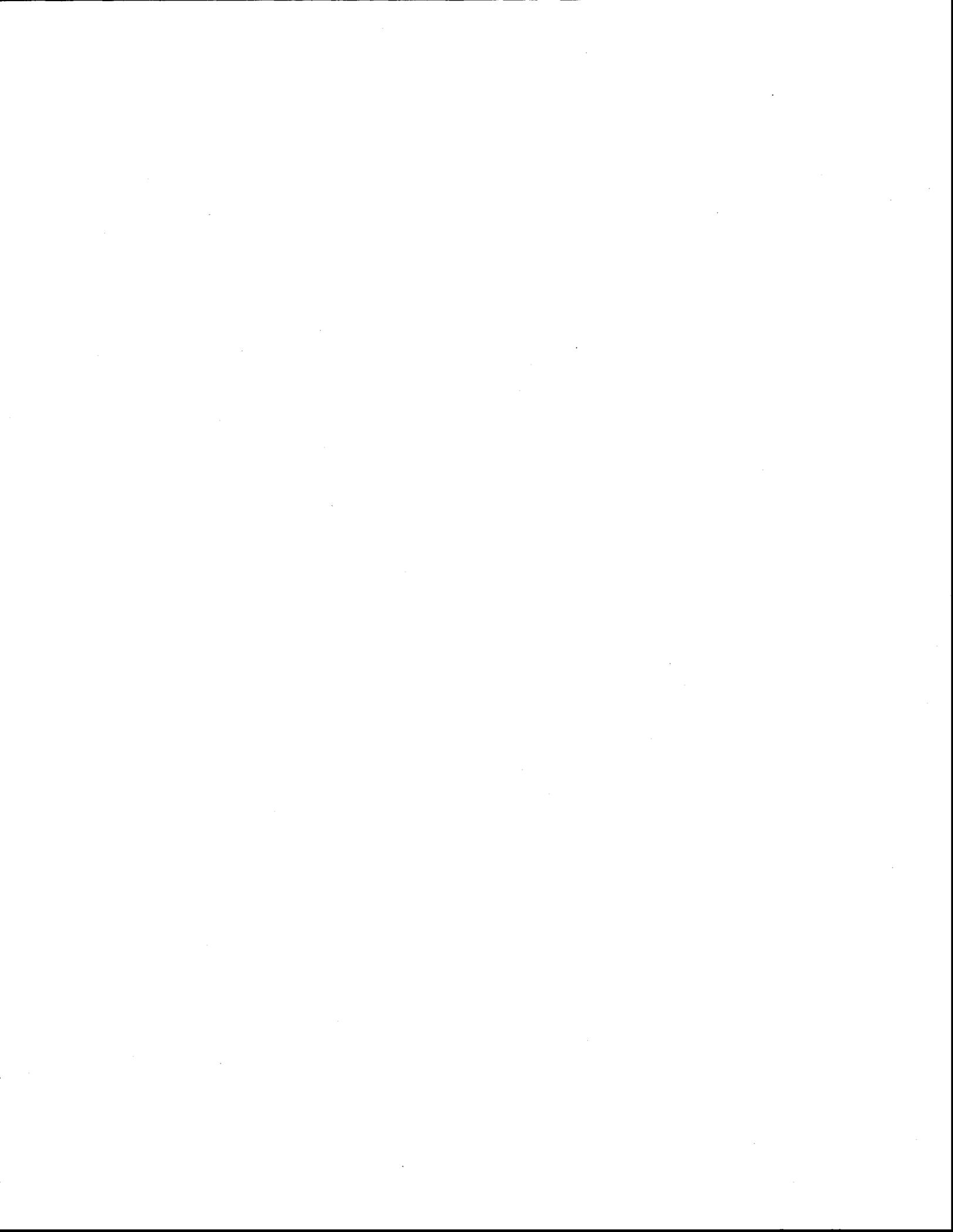
- Insurers should be encouraged to write more business through a take out/keep out credit program that permits insurers to completely write themselves out of the beach plan;
- Existing plans should be authorized and encouraged to purchase adequate catastrophe reinsurance protection to the maximum extent possible from the reinsurance market; and
- Surplus line writers should be encouraged to take commercial and commercial-residential risks out of the plans.

In addition, we would like to make some suggestions by borrowing from Florida and Texas. First, the beach plan presently offers deductibles from \$250 to \$2,500. We would recommend that the beach plan explore higher windstorm deductibles and a possible co-payment. We would favor mandatory 1% to 2% deductibles.

Second, insurers should be able to pass-through all or a portion of their residual market assessments to policyholders and/or cap their residual market assessments. In Florida, this change generated substantial interest from insurers and created an incentive for new insurers to enter the market. As an alternative, in the event of industry assessments by the residual market, insurers should be authorized to take a premium tax credit over several years (e.g. 5 years) up to the amount of the assessment. Finally, it is crucial that the beach plan charge actuarially sound rates which are not below the voluntary market and that the Department of Insurance continue to review and be receptive to catastrophe computer modeling in the ratemaking process.

In closing, AIA again commends you for your active interest in this critical issue and appreciates this opportunity to provide you with our views on this important matter. Life after Hurricane Andrew for property and casualty insurance industry can never be the same. All coastal states are experiencing similar problems to varying degrees. There is no silver bullet, but by adopting some of the reforms in Florida and Texas, North Carolina can help promote stability in the market.

APPENDIX G



BEACH PLAN PRELIMINARY RECOMMENDATIONS

- I. Managing the Financial Risk (Reduce the major insolvency risk with alternative funding methods)**
- A. Retain the beach plan distributions on an annual basis as a pre-funded loss reserve.**
 - B. Secure advance funding for catastrophic loss. This could be a line of credit or revenue bonds with a guarantee to issue at the time of a catastrophe. The bonds could be repaid over a period of years including interest (ex. 20 years).**
 - C. Recoupment process also added. All property policy premiums in the state could be increased up to a certain percentage each year until the entire loss has been recouped.**
 - D. The probable maximum loss for the beach plan needs to be determined in advance so the proper balance between these three funding mechanisms is secured in advance.**
 - E. Some individual exposure to an individual company surplus or reinsurance would also be part of the funding mechanism. A maximum assessment per company could be established.**

II. Rating and Credits

- A. Simplify consent to rate so that the document needs to be completed when a policy is issued and the billing notify the customer on subsequent anniversaries. This will enhance the company's ability to write business in the voluntary market rather than the beach plan.**
- B. Increase credits for homeowner policies to make it advantageous to write voluntary business to reduce assessments. This could be done either by allowing a company to record the actual beach plan charge for each policy written and take the credit or develop a formula such as two times the homeowner allowance or three times the homeowner policy allowance as credit. The formula approach would be simpler and also could develop a premium that actually gives greater credit for a voluntary homeowner policy than the beach plan secures in the current formula for a DP policy.**

III. Expand beach plan territory to certain areas such as Manteo.